LOUISIANA BAR JOURNAL

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A Message From The President

Clarence L. Yancey

First let me say how much I appreciate the honor and the opportunity of serving you, the members of the Louisiana State Bar Association. I hope that you will consider this as a personal message to each of you and an invitation to contact me at any time during my term of office, giving me your criticisms, good or bad, and particularly your ideas and suggestions on the betterment of our Association and our profession.

The 1956 Convention at Biloxi endorsed the idea of another attempt to have the dues increased. Those of us who have been active in Bar work are particularly impressed with the need for additional revenues if our association is to do an acceptable job for the lawyers of Louisiana. Each time a project is undertaken, we are met with budget limitations. With the present income, your officers can do only a job of caretaking and maintaining the organization with a minium of activity. We would like to put on an active public relations campaign and acquaint the public with services that lawyers can perform. We would also like to do things which would improve the general outlook of the public toward the legal profession. Much work needs to be done in both of these areas and although we have a fine Public Relations Committee, it is greatly handicapped for lack of funds. I mention this as just an illustration of the need for increased dues.

Ballots will be distributed for another vote on the proposition, and I solicit your support. If you do not favor the increase, I would appreciate it if you will write me a letter giving me your reasons. I find that the doctors of the state pay $50.00 per year to be members of their State Society. I have inquired of labor unions and find the following examples of membership dues:

Plumbers and Pipefitters	$66.00 per year
Seafarers Union	$79.20 per year
Mechanics	$48.00 per year
Boilermakers, Helpers and	

Apprentices	$40.00 per year
Iron Workers	$48.00 per year
Laborers	$24.00 per year
Teamsters	$60.00 per year
Aluminum Workers	$40.00 per year

The above samples are neither the highest nor the lowest, but merely the figures given to me as samples of the amounts paid by tradesmen and laboring people in order to pursue their respective occupations. Surely the lawyers of Louisiana can afford $25.00 per year for the advancement of their profession.

There will be submitted to all members of our Bar the matter of amending the Articles of Incorporation so as to create a House of Delegates. The idea behind this is to create greater participation in bar work by the members. Under this proposal, each judicial district would have a representative or representatives in the House of Delegates, depending on the number of judges in the district. The delegates would meet semi-annually. One of the advantages which it is hoped would come from this change is that matters of business would be better handled by these representatives than by referring matters to the convention floor on the last day of the annual meeting, which is generally poorly attended. It is thought by many that the proposal will be more democratic and will insure better consideration of association business than the present system.

In May, Attorney General Brownell invited the presidents of the state bar associations, the larger city bar associations, and other groups representing lawyers to meet in Washington and consider the problem of congestion in the courts, with emphasis on the federal courts. This meeting was attended by Mr. James G. Schillin, President of the New Orleans Bar Association, and by me. The conference lasted two days. In addition to the Attorney General and Mr. William G. Rogers, Deputy Attorney General, there were other public officials, including numerous outstanding judges, who took part in the sessions.

Suggestions at this conference ranged from abolishing diversity jurisdiction in the federal courts altogether to increasing

the jurisdictional amount from $3,000.00 to $10,000.00. Also discussed was the desirability of providing that corporations be considered citizens of each state in which they qualify to do business, thus eliminating diversity.

One of the results of the conference will be the establishment on a permanent basis of "The United States Attorney General's Conference on Court Congestion and Delay" and Mr. Schillin and I and our successors are to be called upon by this conference from time to time to make such recommendations as our respective associations deem proper which would tend to relieve court congestion.

If any members of the Bar or other interested persons have suggestions on this subject, it would be appreciated if they would communicate with Mr. Schillin and me.

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Report of Supreme Court Building Committee

As Chairman of your Supreme Court Building Committee, I am pleased to make this report on the very satisfactory progress being made on this project and on the construction of the new building in the new Civic Center in New Orleans, our building being adjacent to and adjoining the new State Office Building, construction of which has also been commenced.

Following my report to you made on April 30, 1955, there was considerable work done by the Architects and with consultations with us, in completing the final plans and specifications. After due advertisement, the Louisiana State Building Authority received and opened bids for the construction of the building on November 15th, 1955. Six contractors submitted bids and the lowest three, with various alternates, were grouped close together. The lowest base bid exceeded the $1,600,000.00 which the Authority had allocated to our building but our Architects and our Committee, together with the Chief Justice for the Supreme Court, urged the Authority to accept the low bid on the original plans and specifications without any changes, alterations or alternatives. I am pleased to advise that the Authority was most cooperative in so agreeing and on November 22nd, 1955 accepted the bid of R. F. Farnsworth & Company, one of the outstanding contractors of our State and promptly thereafter the contract was signed in the sum of $1,739,000.00 with a completion date of 420 calendar days.

A construction schedule was prepared by the general contractor and furnished to the State Building Authority and the Architects and ground was broken and excavation made in accordance with the schedule. All of the foundation piles have been driven and the concrete footing pile caps are being poured in place and the contractor is now waiting for delivery of the structural steel. I am advised by the Architects that this work is proceeding in accordance with the construction schedule and unless there should be unexpected delays, the building should be completed in February 1957.

We were fortunate in being able to have the total amount allocated for our building, plus the additional amount approved as shown above, used wholly for the construction of the building, believing that in some way we would be able to obtain the ad-

ditional funds that will be required to furnish and equip the building in accordance with its requirements and in conformity with its dignity.

At my request, the Architects have prepared a budget estimate of these requirements which is as follows:

Furnishings, carpeting and drapes for the Justice Suites	$ 45,000.00
Furnishings, and carpeting for the Court Room	25,000.00
Furnishings, some carpeting and venetian blinds for the remaining offices	25,000.00
Furnishings and venetian blinds for minor offices, miscellaneous rooms, and large reading room on the first floor	30,000.00
Total	$125,000.00
Architects Fees	12,500.00
Total	$137,500.00

With the building now under construction and with a completion date not too far distant, it now becomes necessary that we undertake to solve the problem of obtaining the necessary funds to properly furnish and equip and have it ready for full use promptly when it is completed. This is going to be a joint responsibility, not only of your Committee, but of the State Building Authority, of the Supreme Court itself and of the Officers and members of this Association. With proper effort and full cooperation, we should be able to convince Governor Long and the new State Administration to arrange to provide these funds through the Legislature or some governmental agency. Your Committee will proceed with a consideration of this problem and will call on all concerned for their assistance in working this out to a conclusion.

Your Committee wants to acknowledge and give credit to the valuable assistance and cooperation of all of those whose efforts have worked in bringing this project, so important to all of us, to its present status and especially to commend the Louisiana State Building Authority, all of its members individually and our group of competent architects who have all together worked to make our new Supreme Court building a reality.

H. PAYNE BREAZEALE
Chairman

The Challenge of Statesmanship

Address by E. Smythe Gambrell,
President of the American Bar Association
At the Annual Meeting of the Louisiana State Bar Association
and the Louisiana Law Institute April 30, 1956

President Young, Distinguished Guests, Fellow Americans:

This is truly an inspiring meeting. My first words must be of warm thanks for the gracious hospitality you have accorded me. As a representative of the American Bar Association and as a working lawyer, I am grateful for the privilege of sharing in the fellowship of this occasion. My pleasure in being your guest is heightened by the opportunity it gives me to visit with so many of my fellow workers in the ABA.

Louisiana has always had a leading role in our national body. Louisiana's delegation at our organization meeting in Saratoga in 1878 was both large and distinguished. Since then your State has given us many ABA leaders, including three great presidents, — Thomas M. Semmes, William Wirt Howe and Edgar H. Farrar. Louisiana has produced great lawyers, great law teachers and great jurists, among them Chief Justice White, Judah P. Benjamin and a host of others, some of whom happily are living gloriously today.

In many ways your State has contributed to the jurisprudence of the nation. Yours was the privilege of transplanting the Civil Law in our country and imparting its cultural influence throughout the great states which came to us through the "Louisiana Purchase".

Among your notable achievements in recent times has been the sponsorship of the highly successful Deep South Regional Meeting under the leadership of Cuthbert Baldwin and his splendid team of co-workers last year.

It is fitting and proper that you are having today a joint session of your Association and the Louisiana Law Institute, to aid the profession in meeting its responsibilities for keeping law and its administration abreast of society's needs. Whether in

Common Law or Civil Law, and in whatever land, we serve as one great priesthood the common cause of justice. Ours is the happy privilege of calling men everywhere to worship at the shrine of liberty under law. I know of no plainer call than a common loyalty to law and its appeal to reason. The world wants law. What is law? Law is the spirit of fairness and justice. It is the antithesis of greed and brute force. Law is the spirit of freedom — freedom according to law. It is the antithesis of autocracy and tyranny. Law is our common heritage, our common pride.

As the late Justice Cardozo put it:

> "Law in its deepest aspects is one with the humanities and with all things by which humanity is uplifted and inspired. * * * Law is not a cadaver, but a spirit; not a finality, but a process of becoming; not a clog on the fullness of life, but an outlet and a means thereto; not a game, but a sacrament."

Law depends on social progress, and social progress, in a real sense, depends upon the correct creation, interpretation, and administration of law. The growth of law and of legal service must be as unceasing as life itself.

We who are heirs of the Common Law are coming more and more to realize that law is not the embodiment of inexorable scientific formulas and to understand the words of Mr. Justice Holmes, who said a half century ago: "The life of the law has not been logic; it has been experience."

"Law", says Dean Pound "must be stable, and yet it can not stand still". From our point of view, the institutions of civilization are subject to two forces; those which are enduring and those which make for change. It is important that each be identified for the contribution it has to make to human welfare.

In a democracy lawyers are the natural leaders from whom and whose conduct the attitude of the community toward the law ought largely to be derived. The prestige and authority of law as a social force at any time is very much what the lawyers make it. There are many tasks and opportunities to challenge the lawyers of today, and it is clear that if they do not direct the course of legal development, others, perhaps less qualified, will. Lawyers should be stirred by an enlightened self-interest, for the people will neither patronize nor endure a system of justice that is tardy, inefficient, or insincere.

Someone has said that the things which we of the several states have in common are greater than the things which sometimes divide us. I think it would be more real to say that the things we have in common are those which do divide us — which give us each the right and power to move on independently, though in accord. And nothing, I venture to suggest to you, is more truly calculated to keep alive and foster friendship between us than the common love of freedom and the devotion in common to those great principles of impartial justice which are the foundation — the sure foundation — of the Common Law. Democracy, self-government, liberty under the law — these are still the passion of the American people. Property they ardently desire, but freedom they will have; and faith in the constitutional structure under which that freedom has been enjoyed is the deepest force in our national existence.

We at this meeting are living exhibits of the solidarity of the legal profession in this country. We have come to realize that the lawyer can live in isolation. Belatedly we are becoming aware of the fact that without cooperative enterprise the practitioner lacks an essential ingredient of professional stature, and that only in joint endeavor with his fellows can the lawyer achieve the full scope of his professional function. In large part, the measure of the profession's success in discharging its public responsibilities is the vigor and the effectiveness of its collective units. The active members of the nation's bar associations comprise the aristocracy of the Bar, an aristocracy whose selection is based upon service and achievement in keeping with the highest traditions of our profession. The lofty ideals which motivate us can be furthered only by collective action, co-ordinated and marshaled by a vigorous and all-inclusive national organization.

Our calling was born and nurtured in the need for guidance for the processes of social evolution and orderly growth. We, above all, know that change is inexorable, that what's past is prologue, and that there is no end to potential human advancement. Each day marks the end of another page in the eternal story, and the turning of a new page yet unwritten. The rivers of our national life will flow onward and not backward.

Today we stand together at the threshold of an era of unequaled promise, a period of unprecedented opportunity. Within twenty years, we are told, the population of our country will exceed two hundred million. Within twenty years our national

income will be doubled. Before us lie new frontiers in science, education, industry, and commerce. New sources of energy may make man the complete master of his physical environment. New horizons in travel and communications are being revealed. To us is offered, in greater measure than ever before, the glorious hope of a fuller and richer life for ourselves and for those who come after us.

But this bright promise is not unclouded. Man still has to prove his capacity to control the physical forces that his technology has unleashed. A restive world in bondage must have a share in the blessings of freedom and abundance. More and more it is borne in upon us by current developments that freedom is not well founded unless it is universal; that prosperity is not lasting if it is merely localized or isolated; that civilization is not real on this earth if it is to be enjoyed by only the few.

In my current travels in all parts of our country, I am endeavoring to discuss the many problems which now beset our profession and the public. Human freedom transcends all else in importance. The deepest issue of our time is whether civilized peoples can and will maintain a free society.

In a strife-ridden world, America stands as a beacon for freedom-loving peoples everywhere. For some, the lamps of freedom have never been lighted. For others, for whom the lamp once burned, the light is out. We are the stewards of this freedom. To guard it calls for constant vigil. We must maintain in this country the example of a successful democracy, where people can live out their lives in freedom of expression and of religion and of opportunity. If we should fail, we could carry down with us the hopes and yearnings of all mankind.

Alexander Hamilton first sounded our challenge. In the first number of the Federalist Papers, he said, "[I]t seems to have been reserved for the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force." The ancient challenge is still with us, for the battle for freedom can never be finally won — it can only be finally lost. Victory gives us only the chance to fight again.

Why is it that only the people occupying less than 10 per cent of the surface of the earth have had what might be termed

adequate food and clothing and the other comforts of a full life? The answer is that they are the people who set themselves free — free from physical restraint; free from ignorance and superstitions; free from the illusion that rulers had infinite wisdom; free from political doctrines that held men in bondage to governments; free to work out their own destiny with their own minds and their own hands and in their own way, subject only to rulers that would prevent them from interfering with the freedom of others. In the process of the emancipation of that portion of humanity, there has been released in society a driving force, an individual initiative, and an aggregate accomplishment previously unknown in the history of mankind.

For three hundred years the American people have cherished the spiritual concept that the rights of man to freedom are personal to him from the Creator, not from the state. It was written in our Declaration of Independence. This concept has guided us not only to a life of human dignity, but to material abundance.

The great truths of humanity do not spring newborn to each new generation. They emerge from long experience. They are the gathered wisdom of the ages. They are renewed in times of conflict and of danger. In this sense, the current challenge to our political institutions may prove to be a kind of blessing in disguise. The mystery, grandeur, and tragedy of history is man's surest guide in troubled times. If the times in which we are now living do not bring a fuller understanding of the great traditions of our civilization and a deeper desire to affirm them, we are not worthy of our heritage.

Today there are vast uncharted frontiers — physical, spiritual, and intellectual — standing as our constant challenge. We my well lose our will and our ability to cope with these challenges if we develop and accept the habit of being satisfied with the meager crumbs of material security which some form of benevolent government would dole out to us. To the extent that we permit ourselves to be so dependent upon government that we can no longer think or achieve on our own, dependent upon government for those things which traditionally we have provided for ourselves, we defeat the very meaning of democracy and permit government to rule rather than to serve the individual. By every step we take toward making the government caretaker of our lives, we move toward making it our master.

As we face the challenge of today's frontiers, the prospect

of an era of unprecedented growth, the threat that looms largest is the philosophy of despondency and despair reflected in the increasing clamor for security. This alien urge for protection from the normal processes of change and development can lead only to stagnation and decay. Security is the antithesis of growth. Discovery and improvement, whether in the field of ideas or in the realm of economic activity, must not be stifled in the name of security. Only by confining each man to a predetermined mold can any of us be secure. If each man is to be free to shape his own destiny, to realize his own potential, to think and build, then each must assume a measure of risk. Growth is change, and change brings dislocation. One man's growth is another's insecurity. If our national income is doubled, no doubt the makers of kerosene lamps will suffer, since more people will use electricity. So, a cherised belief may be destroyed by the revelation of some undiscovered truth. Resistance to change for the sake of security is a product of fear and of lack of faith. It has no place among a dynamic people dedicated to the principles of ordered freedom.

We should recognize, too, that this preoccupation with security from competitive forces is the prime characteristic of the ideologies against which we are struggling. It is the Marxist dialectic that holds out the false promise of a Utopia created by a stroke of the pen or a quick revolution, a Utopia in which all are happy, equal, and secure. It is the Communist philosophy that seeks the millenium in an eternal, fixed, stable, never-changing social order. In such a state, no man need suffer from insecurity, for no man is free to grow. Whether the plane is intellectual or economic, resourcefulness is suppressed, innovation is prohibited, and development forbidden. The advocates of the socialist state have ignored the truism pointed out by John Stuart Mill when he said, "[A] State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes, will find that with small men no really great things can be accomplished."

The ancient civilizations of China, Egypt, Athens, Rome, and Spain — the fall of all these great societies teaches us that in stagnation there is only decline. The siren call of destruction that passes under the name of security is revealed by Alfred North Whitehead when he observes, "[A] race preserves its vigor as long as it harbors a real contrast between what has been

and what may be . . . . without adventure, civilization is in full decay."

The cry for security is the call of the fearful and the faithless; the God-fearing man who is self-reliant and conscious of his powers calls for freedom, not security. The real security will be found not in repression, but in giving men free rein for their drives and their capacities. It is one of the paradoxes of labels that in common usage the man who puts his faith in eternal progress and growth is tagged a conservative, while the man who espouses the cause of the unchanging and stagnant social order is counted as a progressive.

The American creed is premised upon a simple belief: that each human being is a creature of God and endowed by Him with the dignity of individuality. Each must be free to shape his own integrity and to seek his own destiny. It follows that he may not be treated as a statistic on an economic or sociological chart. Respecting this right of the individual man to realize his own potential, we have pledged ourselves in the most solemn compacts of government to allow to our fellows the greatest freedom of choice possible in the exigencies of living together. Where choice must be limited to preserve the freedom of others, we have sought to assure that each shall have the greatest possible voice in making the collective decisions that will control his life, by keeping the powers of government as close as circumstances will permit to those subjected to the power. We have chosen to erect the structures of government in the belief that no national government should do what the states can do, that no state should do what the local government can do, and that *no* government should do what a man can do for himself. The movement for greater authority for the cities, the concern for states' rights, and the demand for some limitation upon the federal treaty power, all are variations on this persistent theme — that government should not be removed from the hands of the governed, that choices which must be made collectively and not individually should be made by the smallest feasible group according to its own needs.

By so doing, we have sought to preserve to each the freedom to grow, to employ his God-given powers and talents as he, in the teachings of his conscience, believes best. Our concern rises above the creation of a favorable material environment in which men can dwell in comfort; it is for us the supreme function of

government to keep clear the paths for the enlargement of human personality, the realization of man's dignity, and the recognition of individual integrity.

It is almost trite to observe once more that these principles were enshrined in the Constitution by the wise men who gathered to lay the foundations for the government under which freedom has flourished and our people have prospered. The central government was to be entrusted with limited and specifically delegated powers. Only those matters that required uniform treatment, only those problems that demanded a national solution, were delivered up to the centralized power.

The great catalogue of human liberties contained in the first ten amendments to the Constitution endeavored to transmute the dignity of man into a living reality. In the turmoil of our time several of these inalienable rights have been brought to the forefront of our national conscience. Freedom of speech and of the press, the right to assemble peaceably, and the privilege against self-incrimination have all found their staunch and vocal advocates. We have heard much of the first eight amendments, but in the clamor of controversy over these our people seem to have suffered from a mass amnesia concerning the 9th and 10th Amendments.

In the structure of our institutions of government, we have put faith in the ability of a man to decide what is good for himself. But we have reposed less faith in his ability to decide what is good for others. We are skeptical of the wisdom of a transient and temporary majority, and we are suspicious of those who claim the prescience to divide the common good and to lay down the patterns to which all thought and all activity will be made to conform to achieve that good. We have recognized that the capacities, drives, wants, and needs of the human being are beyond the powers of any man or group of men to comprehend and encompass at any single time, and that only experience can provide reliable guides. We accordingly have guaranteed to the individual the right to experiment, to be different, to choose an untried path which the rest of us may regard as sheerest folly. In imposing limitations upon the powers of government in the interests of individual freedom, we have sacrificed a measure of governmental efficiency. But this sacrifice is offered to achieve what we are proud to believe is a higher good. That incomparable observer of the American scene,

de Tocqueville, wrote over a century ago, "Democracy does not give the people the most skillful government, but it produces what the ablest governments are frequently unable to create; namely, an all-pervading and restless activity, a superabundant force, and an energy which is inseparable from it, and which may, however unfavorable circumstances may be, produce wonders. These are the true advantages of democracy."

But for all our material abundance, the real strength of America, and the author of its plenty, is the spiritual and moral force of our ideals. Thomas Jefferson, in the troubled year 1782, asked the fundamental question, "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?" The power of each man to find his own destiny and to seek his own salvation is the essence of the teachings of the world's great religions, and the wellsprings of our political beliefs lie deep in the heart of our spiritual faith. The reawakening of people everywhere to the primacy of things of the spirit reminds us once more of individual responsibility and of the dangers of assuming to judge our fellows. We are reminded, too, that no man is so all-seeing and all-wise that he can create for the rest of us an earthly paradise, and that at the same time man is not a helpless mechanical automaton, inexorably directed by the forces that surround him. We are admonished to love and to respect our fellow man, and to walk humbly in the sight of God.

In the current state of world unrest, the struggle between Communism and freedom is not alone a war of economic and military power. The greater war is the war of ideas, a spiritual war of moral and religious values. Our best weapon in this battle is to instill the spirit of freedom and faith in the hearts and minds of people everywhere. Even in this age of discovery, when science has found new sources of energy of almost incomprehensible magnitudes, the forces of the physical world pale in comparison with the power of man's great religious and moral ideals. It is this power we have invoked to preserve and to spread throughout the world our precious heritage of freedom and dignity of the individual.

History teaches that liberties are seldom lost in a frontal attack leveled against them. The threat lies not in open challenge, but in apathy and complacency. Unused, our great free-

doms may atrophy and weaken, and their enemies, through cunning propaganda and small but steady encroachments, may overwhelm us unaware. I am not so much concerned, then, about those liberties for which the defense has already been rallied. But there are other principles, no less basic to our form of government, which have been largely ignored.

We have submitted more and more in recent years to governmental control of the pursuit of our livelihoods. We look more and more to government to satisfy our every want and need. We have made government the caretaker of increasing shares of our lives. And we have relinquished the precious right of man to make those choices which, if he is to be a man, he must make for himself. The right of man to be let alone has been relegated to a lower order in the scale of our common values. But it is a fundamental article of our national faith that we shall not destroy the ancient landmarks in our effort to accommodate the demands for government authority to cope with modern needs. Our principles of freedom must stand as fixed and immovable monuments above the ebb and flow of the currents of change. Paramount and above all other considerations, we must channel the flow of progress within the order and limits of the law, and not sacrifice principle to expediency in a search for easy solutions to the problems that beset us.

To me, one of the gravest threats to American ideals is presented by the inordinate and pervasive power of the purse, the power of bounty, the power to spend. To extract forty-six billions of dollars in income taxes alone from the national economy is necessarily to exert a force over many areas of activity which earlier generations had confidently believed to be immune from government interferences or subject only to the power of their own states. Such tax collections far exceed the legitimate costs of operating the federal government within its constitutionally delegated bounds. The excess remains to be dispensed by the holders of political power in the form of subsidies, bounties, benefits, and allowances. By taxing us and using the proceeds to purchase compliance with its wishes, the federal government may arrogate to itself unlimited control of our lives. It is one of the hard facts of life that power over the purse strings often carries power over the minds of men.

When government is the consumer of one-fourth of all the goods and services provided by an abundant economy, when it

dispenses vast additional sums by way of bounty, none of us is completely free from its influence. Government by largess has begotten a centralized authority of monstrous proportions, and it has at the same time broken down the fundamental design within the central government for forestalling the corruption of absolute power. The doctrine of separation of powers, the system of checks and balances, teaches that neither the legislature nor the executive should be servile to the other. It was our plan that the legislative branch, representative of and responsive to the popular will, would formulate policies which the executive would put into effect. But through the power of patronage, the plums of public works, and the bounties of benevolent paternalism, the legislature has been brought to heel more than once in recent decades. Too often the executive has determined the national policy, and at best the legislature has served as a censor of his programs, and at worst, as a rubber stamp. Ironic though it may be, the powers by which the legislator has been brought down by the administrator were conferred by that same legislator.

At the same time, the powers constitutionally reserved to the states have been gradually usurped through this power to disburse, through what are euphemistically referred to as "grants-in-aid". Under more than forty separate programs, the governments of the states have been offered the bounty of the federal treasury in return for the surrender of their constitutional rights to provide for the interests of their peoples in their own way. The notion that the central government is somehow providing aid when it drains the sources of tax revenue and doles out a minor share to the states upon bureaucratic conditions is a mischievous fiction. A government is not a productive enterprise — it does not create wealth, it does not contribute to the sum total of economic goods. If there is a single well to fill a community's needs for water, the man who drains it and then distributes the water to his fellow townsmen upon conditions he chooses to lay down is not furnishing aid to his neighbors. Recognizing this simple truth, the legislature of the state of Indiana in 1947 resolved:

> "We have decided that there is no such thing as 'federal aid'. We know that there is no wealth to tax that is not already within the boundaries of the 48 states. So we propose henceforth to tax ourselves and take care of ourselves. We are fed up with subsidies, doles, and pa-

ternalism."

Ideally, each person, or more accurately each family, should control the spending of what it has earned. In the long run, no one else can comprehend as well the family's needs and aspirations, and no one can see to it that the fruits of their labor are put to better use. Responsibility for earning begets responsibility in spending. The farther the power to spend is removed from the person whose toil and sweat created the power, the greater the likelihood of economic waste, to the detriment of our common standard of living and to the benefit of on one. The concentration of vast wealth in the hands of a remote and centralized government penalizes thrift and encourages waste. The money is there to be spent, the thinking runs, and unless we get our share someone else will. A community that would reject out of hand a proposal that a public building should be financed by voluntary contributions or by a tax laid by the townspeople upon themselves will nevertheless clamor for federal funds for the purpose. It is difficult to respect money that has come from someone else's pocket.

Opposing candidates for public office often vie with each other in offering government bounties in return for political support, bounties which have been collected from these same deluded individuals. More and more we are moving in the direction of appropriating the fruits of all our endeavors to a community storehouse upon which we shall all be dependent for our sustenance.

By pursuing policies which make it useless if not impossible for an individual to earn and to save any substantial amount, the government has restricted the availability of the capital which serves as the life blood of the economy and provides the tools of our callings. Control of capital carries with it control of initiative and innovation as well. As the eventual sole source of capital funds, the government would find itself at the pinnacle of the socialistic ideal, the owner of all the means of production in the economy.

Unchecked, this exaltation of the state over the individual and this disregard for the right of each to choose for himself can lead in but one direction.

Liberal education is the keystone of freedom. The search for truth is, as it has always been, the noblest experience of the

human spirit. We are false to ourselves and to our best instincts if we turn our backs on truth or close our eyes when it beckons.

But the recent White House Conference on Federal Aid to Education troubles me. In the long view it poses a serious threat to democracy and freedom. Although we may have great respect and genuine affection for the present occupant of the White House, we should remember that executive changes do take place, and we should ponder well the lessons to be learnd from Hilter's complete domination of the German people through the perversion of education.

While the unequal distribution of wealth throughout the forty-eight states might suggest federal aid to education, it would be error to expose the direction of the educational systems of the several states to the influence of a federal board or bureau which ultimately would attempt to supervise teachers, prescribe curricula and subject matter, and otherwise condition the education of our oncoming generations. I feel very deeply that the independence of education is essential to the life of a democracy.

The best safeguard against the constant threat of the enemies of liberty to pervert and enslave the minds of our youth by mass propaganda is for each state, county, or school district to liberally support a sound program of public education on a decentralized basis, under local control — free from federal manipulations, free from subversive control.

Reassurances that state and local schools receiving federal support will be protected in their autonomy are not enough. The folly of relying on such is indelibly written in the abuse and misuse of federal powers in the past twenty-five years. Someone has wisely observed: "Whose bread I eat, whose song I sing." To allow our fine independent public school systems to become hopelessly addicted to, or dependent upon, federal aid would be nothing short of a national calamity.

Unless men of wisdom and devotion to our spiritual ideals assume their rightful place of leadership, the shining promise of a new age of greatness will remain unfulfilled, and the ever-increasing trend toward unlimited government may advance beyond recall. The call of the hour is for statesmen. Gone is the day of the wild-eyed zealot, the rebellious and irresponsible reformer, and the technician of sterile brilliance. The need to-

day is not for panaceas but for prudence. Reinhold Neibuhr, the theologian, reminds us, "[T]he tragedies in human history, the cruelties, the fanaticisms have not been caused by the criminals . . . but by idealists who did not understand the strange mixture of self-interest and ideals which are compounded in all human motives, by reformers who fail to understand the necessities of personal reformation . . . by the wise who do not know the limits of their own wisdom, and by the religious who do not know that in 'God's sight no man living is justified'."

Never before have the complexity, the diversity, and the interdependences of life so defied simplification and solution. The call in such a day is for men of judgment, able to rise above selfish concerns and allegiances, men who know the virtues of restraint, orderliness, and moderation, and who will heed the lessons of history. The need is for men who will blend self-discipline with God-fearing humility and a warm respect for the rights of their fellow men. The stature of statesmanship is not a commodity to be purchased. It cannot be gained by artifice or contrivance to attract public attention. It is a justly earned recognition of power controlled by conscience and a sense of public duty.

I do not mean to paint the picture too darkly. The people of America still enjoy a degree of liberty unsurpassed among the nations of the world, and they share a material abundance unknown to the past. There are signs of returning sense of responsibility and of renewed respect for principle in the federal administration and among the leaders of both great political parties.

From among our ranks may come the statesmen of the hour. Our calling, as advisors to the public, well fits us for the task. The obligations of leadership which our qualifications impose upon us must be discharged in our private pursuits as well as when we assume public office. We must be ready to be heard and to serve when the interests of ordered freedom demand, no matter how distasteful we find the controversial arena of public service. The positions of power and responsibility we occupy in our professional lives must be justified to the public, not in words but in works. As Thomas Paine said: "Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it."

"A Constitutional Crisis"

Address By William Irl Potter, Kansas City, Missouri Bar Before the Annual Meeting of the Louisiana State Bar Association, Biloxi, Mississippi—May 2, 1956

Is there a constitutional crisis? In a speech before a joint session of the Mississippi Legislature in March 1952 General Douglas MacArthur said: "Our policy is leading us toward a communist state with as dreadful certainty as though the leaders of the Kremlin themselves were charting our course."

In a recent statement, Clarence Manion, former Dean of Notre Dame University Law School said: ". . . the Federal executive and the federal courts are in an effective combination to destroy the Constitutional integrity of the states by the centralization of power in the Washington bureaucracy; that only a strong self-conscious Congress and vigilant sacrifical self-reliance on the part of the states can now save the American Republic."

Senator James O. Eastland of Mississippi, Chairman of the Judiciary Committee of the United States Senate recently stated on the floor of the U.S. Senate that: "The United States Supreme Court has not only arrogated to itself powers which were not delegated to it under the Constitution of the United States and has entered the fields of the legislative and executive branches of the Government, but they are attempting to graft into the organic law of the land the teachings, preachments, and social doctrines arising from a political philosophy which is the antithesis of the principles upon which this Government was founded."

Senator William Jenner of Indiana stated in 1955 in a speech on the floor of the United States Senate that: "The noble edifice of Constitutional liberty is silently disintegrating into a crumbling ruin. This silent disintegration of every policy we make is due to the fact that we have in the United States not one center of Government policy but two. One center I shall call the Collectivist One-Worlders, the other is the legal constitutional government. The Collectivist bloc operates above the Constitution and above the law, carrying out a secret revolutionary p[illegible]

without any attempt to tell the American people what they are doing, or asking their consent. The American Government and political system have always operated under a kind of gentlemen's agreement—that no one seeking office or in office would do a single thing to weaken the Constitution. Limited Government is government by mutual trust. In a happy family we do not frisk each member to be sure he does not carry hidden guns. In a happy country we do not have to investigate each officeholder to be sure he does not carry a deadly weapon to slash the Constitution."

Time forbids a reference to all the insidious but determined methods, in and out of the federal government, to bring about the destruction of the states and of liberty under our Federal Constitution. For many decades the United States Supreme Court interpreted the Constitution so as to accord with the fair import of its language and the intent of the States which created it. In so doing the Supreme Court was an effective brake upon encroachment by the federal government on the powers reserved to the states and the people, and an effective brake upon encroachment by both the federal government and the states upon the basic rights of the people guaranteed in the bill of rights. By following such course with wisdom and zeal to effectuate the will of the creators of the Constitution the Supreme Court became trusted and revered by the people, and highly esteemed by the Bar of America. It was during such period that an eminent British statesman characterized the Constitution as the greatest instrument ever striken off by the hand and brain of man. What now? Many wise, thoughtful and patriotic Americans sense imminent destruction of the republic set up by the Constitution. There no longer exists that almost unanimous trust and reverence that the Bar and the people formerly had for the Supreme Court. Is this fear—this feeling justified? To answer, it becomes appropriate here to examine briefly the record and let the decisions of that court give the answer.

Art. VI of the Constitution provides that a treaty shall be the supreme law of the land. In 1913 Congress enacted a migratory bird law (Chap. 145, Vol. 37, p. 847, U.S. Stat.) which Act was declared unconstitutional by the U.S. District Court of Arkansas, 214 Fed. 154; by the U.S. District Court of Kansas, 221 Fed. 288; by the Supreme Court of Kansas, 96 Kan. 786 and the Supreme Court of Maine, 113 Me. 458, because it

was a trespass on the reserved powers of the states. Thereafter, in the year 1916 a treaty was entered into between the United States and Great Britain for the protection of migratory birds, and two years later in 1918, the Migratory Bird Treaty Act was enacted by Congress to implement the treaty (Title 16, U.S.C.A. 701; Chap. 128, Vol. 40 U.S. Stat. p. 755). In the year 1919 the State of Missouri brought a bill of equity in the U.S. Supreme Court (Holland v. Missouri, 252 U.S. 416) to protest a game warden of the United States from attempting to enforce the Migratory Bird Treaty Act on the ground the statute was an unconstitutional interference with the rights reserved to the states under the 10th. Amendment. Justice Holmes who wrote the opinion adopted by the court sustained the treaty and statute saying: "The only question is whether it (the treaty) is forbidden by some invisible radiation from the terms of the 10th. Amendment. In dealing with the 10th. Amendment we must consider what this country has become in deciding what that Amendment has reserved." Justice Holmes' position was that the 10th Amendment could be overriden by a treaty. Justices Van Devanter and Pitney dissented. The Missouri Attorney-General had called the Court's attention to the fact that just 13 years before the same court in Kansas v. Colorado, 206 U.S. 46 had held that: ". . . all powers of a national character which are not delegated to the national government by the Constitution are reserved to the people of the United States. . . . This Art. X is not to be shorn of its meaning by any narrow technical construction, but is to be considered fairly and liberally so as to give effect to its scope and meaning." The Attorney-General cited also the Court's earlier decision of Geer v. Connecticut, 161 U.S. 519 wherein Chief Justice White said: "(The) attribute of government to control the taking of wild animals and enforced by the common law of England, and was vested in the colonial governments, not denied by their charters, or in conflict with grants from the Crown; that it is also certain that the power that the colonies thus possessed passed to the states with the separation from the mother country, and remains in them at the present day except as restrained by the rights conveyed to the federal government by the Constitution." Of course, the Federal Constitution delegated no power to the national government to legislate as to wild game or migratory birds.

In New Orleans v. United States, 10 Peters 662 the Supreme Court said: "The Government of the United States . . . is one

of limited powers. It can exercise power over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged by the treaty making power." In that case the Court took the same view as that announced by Thomas Jefferson in Vol. VI of his Parliamentary Practice wherein he said: "To what subject this (treaty) power extends, has not been defined in detail by the Constitution, nor are we entirely agreed among ourselves.

1. It is admitted that it must concern a foreign nation, party to the contract, or it would be a mere nullity *res inter alias (sic) acta.*

2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and cannot be otherwise regulated.

3. It must have been meant to except out of those, the rights reserved to the states; for surely the President and the Senate cannot do by treaty what the whole government is interdicted from doing in any way.

4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some, on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others."

It should be particularly noted that the Court in Missouri v. Holland said: "In dealing with the 10th. Amendment we must consider what this country has become in deciding what that Amendment has reserved (to the states)." If that language means anything the court was saying that as time passes and new national questions arise the court must except out of the powers reserved to the states by the 10th Amendment, and without amending the Constitution, so as to authorize the federal government to do what it and the court believes best for the country. This sort of interpretation of the 10th. Amendment constitutes nothing less than an illegal usurpation of the reserved powers of the states. In 1905, 15 years before the Missouri v. Holland decision, the Court in South Carolina v. United States said: "The Constitution is a written instrument. As such

its meaning does not alter. That which it meant when adopted it means now."

Charles Evans Hughes, former Chief Justice of the Supreme Court stated in 1929 in the Proceedings of the American Society of International Law that:

> ". . . if we attempted to use the treaty making power to deal with matters which did not pertain to our external relations but to control matters which normally and appropriately were within the local jurisdiction of the states, then I say again there might be ground for implying a limitation upon the treaty making power that it is intended for the purpose of having treaties made relating to foreign affairs and not to make laws for the people of the United States in their internal concerns through the exercise of the asserted treaty making power."

Now the Missouri v. Holland decision has never been overruled. By treaty we have now been taken into the United Nations Organization. Before the United Nations Charter could obtain ratification by the United States Senate it became necessary to incorporate in the Charter the proviso that: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter." However, a sub-agency of the United Nations known as the Commission on Human Rights has proposed a Covenant On Human Rights, requiring ratification by treaty, for the purpose of establishing for all peoples of the world a uniform system of individual rights, regardless of the nature and character of such rights already established by the national law and usage in each particular country. Concerning the program of the Commission on Human Rights its first Director, Mr. John P. Humphrey declared:

> "What the United Nations is trying to do is revolutionary in character. Human rights are largely a matter of relationships between the State and individuals, and therefore a matter which has been traditionally regarded as being within the domestic jurisdiction of States. What is now being proposed is, in effect, the creation of some kind of supernational supervision of this relationship between the State and its citizens."

Mr. Frank E. Holman, former President of the American Bar Association in an excellent article in the March 1955 issue

of the Freeman points out the secrecy surrounding the adoption of the Declaration on Human Rights in the Paris meeting of the General Assembly of the United Nations on the part of the American State Department. Mr. Holman, being on the alert, as President of the American Bar Association wrote Secretary of State Marshall, John Foster Dulles and Arthur Vandenburg at Paris and demanded that before final action in Paris, that sufficient time be given for the American people to be advised of what was being approved in their behalf. The reply received by Mr. Holman amounted to a confession and avoidance. When the Declaration was finally received for examination it was found to "set up a socialistic if not communistic concept of government for the peoples of the world, including the United States . . . and failed in any way to conform to the traditions, laws and sentiments of the American people." At the same session of the General Assembly of the United Nations at Paris there was adopted a document known as the Genocide Convention, "which was so badly drawn as to endanger American Basic rights", it failed of ratification by the Senate but was pigeonholed to be brought forth at some future time for ratification. If this Covenant on Human Rights and the Genocide Convention should at some future time be ratified by the Senate, then under the treaty law as established in Missouri v. Holland, a death blow will be administered to constitutional liberty in the United States.

Now to prevent treaty law from destroying the American constitutional system the so-called Bricker Amendment to the Constitution was overwhelmingly approved by the Judiciary Committee of the United States Senate but failed by one vote of ratification by the Senate. Although the Constitution gives the President no voice in amending the Constitution, President Eisenhower threw the weight of his administration against its ratification. His chief advisors then and now are John Foster Dulles and his brother Milton Eisenhower. Mr. Dulles has declared himself in favor of Atlantic Union and Mr. Milton Eisenhower in a speech at Wichita, Kansas in 1949 said in relation to UNESCO, a subsidiary of the United Nations that: "One can truly understand UNESCO only if one views it in its historical context and viewed in this way it reveals itself as one more step in our halting, painful, but I think very real progress toward a genuine world government." Thus we see the influence of the internationalists and One-worlders was effective in blocking

Senate approval of the proposed Bricker Amendment to erase the danger to America of treaty law, because, had there been administration support there was no doubt of Senate approval.

Referring to another recent decision of the Supreme Court. The so-called Smith Act, 18 U.S.C.A. 3231 is a part of the United States Criminal Code, and was designed to curb the Communist conspiracy. The Act provides explicitly that "Nothing in this Title shall be held to take away or impair the jurisdiction of the Courts of the several States under the Constitution thereof." There is nothing ambiguous about that language. However, one Steve Nelson, a communist leader was convicted of violating a Pennsylvania anti-sedition Act. On appeal Chief Justice Warren and five of his associates held, in reversing the conviction in the Pennsylvania state court that: "The conclusion is inescapable that Congress intended to occupy the field of sedition . . . therefore, a state sedition Act is superseded, regardless of whether it (the state law) purports to supplement the Federal law." As pointed out by Clarence Manion: "by this judicial discovery of an unexpressed Congressional intention, six Supreme Court Justices effectively nullified the existing anti-communist laws of 42 states of the Union." That is, in spite of the expressed will of Congress to the contrary, the Supreme Court usurped the Congressional power and notwithstanding the 10th. Amendment decreed the States cannot protect themselves from the lawless acts of communists committed within their jurisdiction. The Supreme Court must know the announced objectives of the Communist conspiracy. In the May 14, 1951 issue of the House Un-American Activities Committee appears the following sworn statement of William Z. Foster, Head of the Communist Party in the United States:

> "No Communist, no matter how many votes he should secure in a national election, could, even if he would, become President of the present government. When a Communist heads the government of the United States—and that day will come just as surely as the sun rises—the government will not be a capitalist government but a Soviet government, and behind this government will stand the Red army to enforce the dictatorship of the proletariat."

Finally, let us consider the Supreme Court's decisions of 1954 and 1955 in the school segregation cases, Brown v. Board of Education et al., 347 U.S. 483 and 349 U.S. 294. The issue

there presented was the right of the States under their Constitutions and laws to maintain separate schools for white and colored children.

Everyone with just an elementary knowledge of our Federal Constitution knows that the federal government has only limited, specifically delegated powers and that all other governmental power resides in the States and the people. The federal government was delegated no power by the Constitution to control in any way state operated schools. However, the complainants in these school segregation cases asserted that state maintained separate schools for white and colored children was a violation of the 14th. Amendment in that the segregated schools denied colored children of equal protection of the laws. The 14th. Amendment to the Constitution was adopted in 1868 and from that date until 1954 the United States Supreme Court had held a number of times and as late as 1950, in Sweatt v. Painter 339 U.S. 629, that so long as the States provided substantially equal educational facilities for the children of both races there was no violation of the equal protection clause of the 14th. Amendment. Moreover, Sec. 5 of the 14th. Amendment provides the Congress shall enforce that amendment by appropriate legislation. However, the Congress has never passed any Act holding that state operated segregated schools constituted a denial of the equal protection of the laws, but on the other hand, in 1946, passed an Act appearing in Title 42, U.S.C.A., Secs. 1751-60 which provided for a school lunch program under the Department of Agriculture. That Act recognized the lawful maintenance of state segregated schools by this language:

> "If a state maintains separate schools for minority and majority races, no funds made avaliable pursuant to this chapter shall be paid or disbursed to it unless a just and equitable distribution is made within the State, for the benefit of such minority races, of funds paid to it under this chapter."

So we see, by that Act, that Congress has approved the separate but equal doctrine in state maintenance of segregated schools. The 14th. Amendment expressly gives to Congress, not the federal courts, the power to implement the enforcement of that amendment, and Art. I, Sec. 8, sub-paragraph 18 of the Constitution provides:

> "The Congress shall have power to make all laws which shall be necessary and proper for carrying into

execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof."

In fact, before the Supreme Court began usurping the powers of Congress and of the States that Court in the Civil Rights Cases, 109 U.S. 3 held:

> "(The 14th. Amendment) nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only did this, but, in order that the national will, thus declared, may not be a mere *brutem fulmen* (an empty threat), the last section (5) of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition . . . (by) appropriate legislation for correcting the effects of such prohibited state law and state acts, and thus to render them effectually null, void and innocuous.
>
> "Positive rights and privileges are undoubtedly secured by the 14th. Amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges and by power given to Congress to legislate for the purpose of carrying such prohibition into effect. . . .
>
> "If those (state) laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of state laws, or state action, prohibited by the 14th. Amendment. . . . If the (state) laws themselves make any unjust discrimination, amenable to the prohibition of the 14th. Amendment, Congress has full power to afford a remedy under that amendment and in accordance with it."

Has the Congress been remiss in its obligations under the 14th. Amendment to protect the Negro from hostile state laws? The record shows it has not been. It has enacted:

Title 28, Sec. 1863 U.S.C.A. which prohibits exclusion from service as grand or petit juror in any court of the United States on account of race or color.

Title 42, Sec. 1981 U.S.C.A., provides that all persons within the jurisdiction of the United States shall have the same right to make and enforce contracts, sue, be parties, give evidence and to full and equal benefit of all laws for the security and

property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

Title 42, Sec. 1982 U.S.C.A., provides that all citizens of the United States shall have the same right as is enjoyed by white citizens to inherit, purchase, lease, sell, hold and convey real and personal property.

Title 42, Sec. 1983 U.S.C.A., authorizes civil action for deprivation of any right, privileges and immunities secured by the Constitution and laws of the United States.

Title 42, Sec. 1971 U.S.C.A., provides that all citizens of the United States regardless of race, color or previous condition of servitude, who are otherwise qualified to vote in any state, may vote at any election regardless of the constitution or laws of any state.

Title 42, Secs. 1751-60 U.S.C.A., provides that the Department of Agriculture in the administration of the school lunch program shall bar any state from participation in such funds, which state maintains segregated schools but fails to make a just and equitable distribution of such funds for schools it operates for minority races.

It will be seen by the foregoing that the Congress has been extremely zealous to give legal protection to the legal and political rights of the Negro, but has not gone so far as to encroach upon the rights of the states to provide separate schools for the children of both races. Has the position of the Congress and of the States been unreasonable or unlawful? To answer that question let us refer to the reasoning of the United States Supreme Court in 1896 in the case of *Plessy v. Ferguson*, 163 Sup. Ct. 537 wherein that court said:

"The object of the (14th.) amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the

state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced. . . .

"(We cannot accept the proposition that) the enforced separation of the two races stamps the colored race with a badge of inferiority . . . that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. . . . If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. . . .

"This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all the functions respecting social advantages with which it is endowed. (Quoting from People v. Gallagher, 93 N.Y. 438). Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane."

There being no Act of Congress implementing the 14th. Amendment to justify the segregation decision of the present Supreme Court, let us see by what reasoning, and by what record evidence, the court reached that decision. It recognized that the *intent* of the framers and ratifiers of the 14th. Amendment was important in construing that amendment, but said that *intent* "cannot be determined with any degree of certainty", yet, such *intent* was adequately established by the fact that the 39th. Congress, that promulgated the 14th. Amendment, passed two bills dealing with separate schools for white and colored children in the District of Columbia. In addition, the briefs

show that of the 37 states in existence at that time, only five abolished segregation contemporaneously with ratification of the 14th. Amendment, and three of these states restored segregation after the removal of federal troops. The overwhelming majority either established or continued segregation in the public schools contemporaneously with the ratification of the 14th. Amendment. Therefore, it is clear that if the present court had the will to do so it could have determined, as did its predecessors, the *intent* of the framers and ratifiers of that amendment with respect to the effect of the equal protection clause on segregated schools.

Moreover, the Court did not hold that the *record* of the cases before it justified a departure from the "separate but equal" doctrine; it conceded equality in "tangible factors" such as buildings, curricula, qualifications and salaries of teachers, but said that to separate the colored children from the white children generates in the former a feeling of inferiority that *may* affect their hearts and minds in a way *unlikely* ever to be undone. In this conclusion the Court bottomed it on no *record* evidence but was speculating in the field of psychology. It is long established law that a judgment must be based on something more substantial than mere guess or speculation. Furthermore, the court did not hold that the decision in *Plessy v. Ferguson* violated an Act of Congress or constitutional inhibition, but flatly rejected the separate but equal doctrine announced therein. Why? Because, said the Court, it is not supported by modern psychological knowledge, and to support this conclusion it cited as authorities, works on the social and so-called behavioral sciences, not admitted or admissible in evidence, many of such authors having records of espousal of socialistic and communistic philosophy and many possessing records of affiliation with communist-front organizations. The complete unmasking of these authors by Senator Eastland on the Senate floor has been, so far as I have heard, unanswered by either the Court or the authors.

The Court then concluded that segregation of children in public schools solely on the basis of race, even though the school facilities and other tangible factors be equal, deprived the minority group of equal educational opportunities in violation of the equal protection clause of the 14th. Amendment, and thereafter the court entered its final decree implementing the en-

forcement of said amendment. In doing so it usurped the power of the Congress under section 5 of said amendment and under Art. I, Sec. 8, sub-paragraph 18 of the Constitution and also invaded the reserved powers of the States and the people under the 10th. Amendment. The Court has thus dealt another blow to the very heart and framework of our constitutional republic, which fits in with the pattern set in recent years of encroachment by the executive and judicial departments upon the constitutional prerogatives of Congress, and upon the rights reserved to the States and the people by the Constitution. When, by this process, the Constitution is finally completely whittled away without a vote of the people or consent by the states, then the bill of rights will become a dead letter, the sovereign states created by the founding fathers will become mere geographical boundaries and the people will be at the mercy of an all-powerful central government, an unhappy end that the original states and the framers of the Constitution sought so zealously to avoid.

America must wake up and act. The Constitution and all it means to America and the world is in grave danger. The erosion of the Constitution has already set in. The assaults upon it are quiet and determined and cloaked with plausible and alleged humanitarian objectives. The Constitution's enemies are in the left wing pressure groups; in the United Nations; in large part of the metropolitan press; influential, well-financed labor leaders; in the National and World Council of Churches; in tax-free foundations and leftists in the field of education. Their objectives are not attainable under our Constitution except by amending it or ignoring it. Obviously they do not choose to amend it because they have found ready cooperation from many high in the federal government to implement their objectives by ignoring it. Lawyers who are officers of the courts, sworn to uphold and defend the Constitution of the United States and of their respective states are, in my opinion, under moral if not legal obligation to courageously and openly resist this assault upon the Constitution, for they, more than any other group are capable of understanding and appraising the danger.

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The Compass of A Lawyer's Function

By Chief Justice John B. Fournet
Remarks made at the luncheon of the Junior Bar Section of the Louisiana State Bar Association in convention at the Buena Vista Hotel, Biloxi, Mississippi, May 1, 1956

It is a great privilege and a great pleasure to be asked to say a few words to you today, and because I know you are saturated with the speeches to which you have already listened, and that you must still hear many more of a great importance during the remaining hours of the convention, my remarks will be *very* few indeed, even though I must admit that the presence here today of the Honorable Robert G. Storey, Jr., tempts me to explore and explode some of the "tall" tales from the great and sovereign State of Texas. However, assured that your mood, by reason of the excellent lunch and the party that preceded it must, by now, be very "mellow" and receptive, I am confident that no matter what I say, it will be welcomed by you with even more than your accustomed enthusiasm.

I have on many occasions been accused of being partial to the Junior Bar of Louisiana. I must confess that in this instance I have been rightly accused! This is due partly to the fact that I feel you are my "boys" whom I have watched develop from amateurish and self-conscious law graduates into assured, confident, and able counselors at law, as well as courtroom strategists. However, it is due even more to the fact that I am certain the future of the law, and, indeed our own American way of life, lies largely in your hands and is, in ultimate analysis, dependent upon what you, as the rising generation of lawyers, do with, for, and to the law.

In January, in addressing the Louisiana Conference of Local Bar Associations in Lafayette, Louisiana, I closed my remarks with the statement that I have been particularly impressed with the ability and demeanor of many of the younger members of the Bar in their appearances before the Supreme Court. I pointed out that in brief writing and in the presentation of oral argument you have displayed unexcelled ability, and I predicted unhesitatingly that if such younger members presage a new era

of which they are the pioneers, then the Bench and Bar of Louisiana are indeed on the threshold of the Golden Age of the legal profession.

Today, I would like to repeat that prediction, but I would also like to impress upon you that brief writing and the preparation and presentation of cases in court are only a comparatively minor part of the broader scope of activity that must be engaged in by you as lawyers if you are to attain full growth in our profession. Your responsibility as lawyers transcends mere devotion to clients through the manipulation of mechanical rules in a manner that will best serve the interests of those clients, however necessary to your personal comfort and gratification the remunerative rewards may be. It encompasses, additionally, the conception, establishment, administration, and preservation of a legal system peculiarly adapted to the needs of our people faced with a swiftly changing pace that has, in the comparatively few years since the close of the recent World War, witnessed an almost unprecedented upheaval of civilization in all of its aspects—socially, psychologically, economically, and even physically. And you, as lawyers, must be prepared to meet and help solve the problems arising from these changes on all sides of the ramparts you watch. For this reason, I feel your duties and responsibilities may be divided into five broad groups, which I will name without elaboration, leaving to you the suggestion that a full development of the implications underlying each may, at some future time, well serve as a topic for a symposium or round-table discussion for your group.

Briefly stated, the five functions that will, if given adherence, permit you, as lawyers, to enjoy the solid and durable satisfactions that come from a well-rounded and complete life in the law are: (1) You must be a wise and disinterested counselor—mayhap even a prophet—to men in all walks of life upon any and all occasions, but more particularly at those moments in which they are called upon to meet the varied and climatic crises that, in time, inevitably confront us all; (2) you must be a craftsman trained not only in those skills of your craft that permit advocacy of the highest type in the prosecution and defense of a case in the trial courts and on appeal, but also in those finer qualities that permit the discharge of these skills within the highest traditions and ethics of the profession with which you have been inculcated; (3) you must do your part individually and as a member of the organized bar to improve your profes-

sion, the courts, and the law; (4) you must act, within your own particular sphere of influence, as an intelligent and unselfish leader in the moulding of public opinion; and (5) you must be prepared at all times to answer the call for service in public office, if and when it comes, even, I might add, to the drastic end of taking a seat on the Bench as a member of the judiciary!

Justice Holmes once said that law is an abstraction "where, as in a magic mirror, we see reflected, not only our own lives but the lives of all men that have been." If you permit the five functions just outlined to be the surface upon which is mirrored your contribution to the law, then you may be assured that all those who come after you will have good reason to praise the image there reflected.

I thank you one and all for your kind attention—particularly when you have so many remaining events to distract your thoughts in anticipation—and look forward to being with you next year!

———o———

The Work of The Judicial Council

(Substance of an address delivered by George W. Pugh, Judicial Administrator, Judicial Council of the Supreme Court of Louisiana, before the Criminal Law Section of the Louisiana State Bar Association, Biloxi, Mississippi, May 1, 1956.)

It is appropriate for a representative of the Judicial Council of the Supreme Court of Louisiana to apear before a Section of the Louisiana State Bar Association to discuss the work of the Judicial Council, for the Bar Association was very instrumental in the creation and establishment of the Council.

One of the first matters taken up and considered by the Section of Judicial Administration was the advisability of establishing a Judicial Council in Louisiana. A committee, under the chairmanship of Judge J. Cleveland Frugé, was appointed to study the matter. In 1948 both the Section of Judicial Administration and the Convention of the Louisiana State Bar Association acted favorably on the recommendations of the Committee. The Committee then appeared before the Supreme Court, urging the creation of a Judicial Council by Rule of Court. The Supreme Court was at first reluctant to adopt the plan, but in 1950 a Rule of Court creating and establishing a Judicial Council was adopted.

The Rule provides for a broad cross-sectional representation of the legal profession on the Judicial Council. There are twenty-six members — two justices from the Supreme Court, one judge from each of the three Courts of Appeal, nine District Judges, seven members of the Bar Association named by its Board of Governors, the Chairmen of the Finance and Judiciary Committees of the Senate and House of Representatives, and the President of the Louisiana State Law Institute.

During the first few years of its existence, the Council was relatively inactive. This is understandable, for there was a total absence of funds. In 1954, however, funds were appropriated by the Legislature for the operation of the Council, and since that time the Council has made a real and substantial contribution to the administration of justice.

In its essence, the Judicial Council is a service agency, an organization designed to render assistance to the courts, the legal profession, and the public.

One of the areas in which the Judicial Council renders assistance is in the field of judicial statistics. Why are judicial statistics necessary? The answer is relatively simple. Under Article VII, Section 12 of the Louisiana Constitution, the Supreme Court is vested with broad supervisory power over the entire court system. The advantages inherent in the authority are obvious. But if the supervisory power of the Court is to be exercised effectively, the Court must have available to it accurate and meaningful judicial statistics concerning the work of the various courts throughout the State. One of the major tasks of the Judicial Council is to provide the Court with this information.

In collecting the necessary statistical data, every effort has been made to avoid overburdening the Clerks of Court. Only the most crucial type of information has thus far been requested, and the report forms have been made as simple as possible. Every other month we receive statistical information concerning the number of civil cases filed and set for trial. Compilation and analysis of these reports show clearly that, by and large, a Louisiana lawyer who really wants to get his case to trial may do so within a reasonably short time. In the light of this statement, one may ask why such judicial statistics continue to be necessary?

We in Louisiana must be vigilant to avoid the accumulation of any degree of docket congestion. A Louisiana lawyer is astonished to learn that in some parts of this country a lawyer in a personal injury jury case must wait about three and a half years from the time his case is ready for trial until he can secure same. Experience in other states shows that as an area becomes more urbanized and industrialized there is often a tendency for its dockets to become overcrowded. In view of the recent industrialization of this state, we must be particularly zealous to counteract any such tendency, and to prevent docket congestion in its inception.

By pointing out the areas in which there is a tendency towards congestion, judicial statistics make it possible for the Supreme Court to act to prevent over-crowded conditions. Under the Constitution, the Supreme Court has the power to transfer

a District Judge from one District to another, and with the generous cooperation of the District Judges, this has, in fact, been done.

The Criminal District Court for the Parish of Orleans affords an excellent example of the fine work that can be accomplished by the supervisory power of the Supreme Court, and the work of the Judicial Council. Some docket congestion had developed in the Criminal District Court for the Parish of Orleans, and this is understandable, for it is well known that there is a high incidence of crime in a metropolitan area the size of New Orleans. In 1954, some 2500 misdemeanor cases, and some 1500 felony cases had been filed in this Court. At a conference between the judges of the Criminal District Court, Chief Justime Fournet and me, it was decided that a Special Court should be established, with the power to consider cases from any of the various sections of the Criminal District Court. Judge J. Cleveland Frugé, of Ville Platte, Judge Charles A. Holcombe, of Baton Rouge, and Judge Henry F. Turner, of Shreveport, all agreed to devote part of their time in serving on the Special Court. These judges, (sitting one judge at a time, so as not unduly to interfere with the work in their home districts), disposed of approximately 500 felonies during the past year, thereby rendering great assistance to the judges and people of New Orleans, but more than this, to the courts and people of the entire State.

As I have stated before, our reports show clearly that, by and large, the dockets of this state are in excellent condition. One problem did exist, however, with repect to cases under advisement — that is, cases tried and fully submitted, but not yet decided. The matter was discussed at some length at the June 4, 1955, meeting of the Judicial Council, and it was decided that a letter should be addressed to all District Judges, notifying them that six months later, on January 1, 1956, a report would be requested as to all cases fully submitted and under advisement on that date for longer than thirty days. Full cooperation was received from the District Judges. In October of 1955, at a joint meeting of the Louisiana District Judges Association and the Judicial Council, the report concerning cases under advisement was fully considered and general agreement was reached concerning its advisability.

I am very pleased to be able to say that these reports were

received with practical unanimity. They would indicate that as of January 1st, there were approximately 100 cases under advisement longer than thirty days. This is much too high a figure, but when it is remembered that this was the first report, and when it is considered that this is an average of about one and a half cases per District Judge, the matter is not nearly so discouraging. At the last meeting of the Judicial Council it was decided that future reports of this nature would be requested on October 15th and January 15th, and I feel confident that when these reports are received they will reflect a substantial improvement.

The reports concerning cases under advisement are very important, and provide the Supreme Court with needed information concerning an important aspect of judicial business. If the reports indicate that there are a great many cases under advisement in a particular District, then there is at least a suggestion that problems exist which should be ironed out, and the Judicial Administrator is then in a position to get in touch with the judge and assist him in devising means of alleviating the situation.

Although the collection and analysis of judicial statistics is extremely important, the Judicial Council performs valuable service functions in other areas. Since by appointment as Judicial Administrator, I have had the privilege of visiting more than half of the parishes throughout the State, discussing with the District Judges and Clerks of Court means by which the Judicial Council might be of assistance. The Council is in a position, for example, to be of aid to District Judges and local bar associations with respect to the revision and formulation of Rules of Court. In this connection, it should be noted that as a result of close cooperation between the Junior Bar Section of the Louisiana State Bar Association and the Judicial Council, a book will soon be published by Claitor's Book Store containing a compilation of the Rules of Court prevailing in the Louisiana District and Appellate Courts, and in the Federal District Courts sitting in Louisiana.

In addition to its regular meetings, the Judicial Council has had important joint meetings with other professional organizations. The joint meeting of the Louisiana District Judges Association and the Judicial Council on October 3, 1955, is an excellent example. The interest generated by the meeting is some-

what suggested by the attendance, which included all seven members of the Supreme Court, five of the nine judges of the Courts of Appeal, and fifty-three of the sixty-five District Judges.

It must be remembered that the work of the Judicial Council is still in its initial stages. There is much important work still to be accomplished. I wish once again to express my appreciation for the fine cooperation that has been accorded the Judicial Council by the judges, lawyers and clerks of court throughout the State. I believe that a firm foundation has been laid for future growth and development. If the Council continues to merit and receive the cooperation of the legal profession, I am confident that continued progress will be made.

Report and Address of The President

William Waller Young
Biloxi, April 30, 1956

To the Members of the Louisiana State Bar Association.

It has been a pleasure indeed, to have had the privilege of serving this Association as its president.

The By-Laws of the Association require a report be made by the president of the Activities of the Association during his tenure of office. I will touch the high spots:

Five meetings of the Board of Governors were held during the year; all were very well attended. It is very gratifying, indeed, to observe the keen interest manifested in the Association's matters by the members of your Board of Governors.

Many of the Committees have been active during the year, and especially is this true of the continued publication by Bob LeCorgne, as its Editor, of the Louisiana Bar Journal.

The Sections of the Association, of course, are very active, as will be attested by the carrying into effect of their wonderful programs to be had the entire day tomorrow.

To the other officers of the Association, the members of the Board of Governors, Committees, and Sections I offer my most sincere thanks for their help and assistance.

The Association during the year sponsored the following programs, all of which were very successfully carried out, and enjoyed by all who had the opportunity of attending:

Fifth Louisiana Conference of Local Bar Associations, held in Lafayette, January 26-28, with the co-operation of the Lafayette Bar Association.

Trial Technique Clinic conducted by Irving Goldstein of Chicago, at Tulane, March 15 to 18. This was under the supervision of the Association's Committee on Continuing Professional Education, James J. Davidson, Chairman, Lafayette.

The American Society of International Law, 50 years Celebration, held at the Law Building, LSU. April 19. The celebration was styled: "A Commemorative Regional Meeting for the American Society of International Law."

The Association assisted in the Deep South Regional Meeting sponsored by the American Bar Association held in New Orleans, in November last.

Memorial Exercises were held on the opening date of the Supreme Court and were very impressive. Among the members of the Bench and Bar memoralized were Sam A. LeBlanc, late Associate Justice of the Supreme Court; Judges Allen Van Horn Hundley, late Judge Ninth Judicial District Court; Dennis Joseph Hyams, late Judge, City Court of Natchitoches; Harold Joseph Moore, Judge, Municipal Court of New Orleans; Gus Voltz, late Judge, City Court in Alexandria; Judson Marion Grimmet, Late Referee in Bankruptcy, United States District Court, Western District of Louisiana, and Robert Lee Tullis Dean Emeritus of L.S.U. Law School.

The Association showed much interest in the Conference of the Inter-American Bar Association held in Dallas just a few days ago. The Association had four delegates to the Conference; Dr. Brendan F. Brown, Professor of Law, Loyola, who presented the Association's paper on "Consideration of systems of law school examination in the Americas: a comparative study;" Dean Antonio E. Papale, Loyola, Benjamin W. Yancey and Max M. Schaumburger.

Your president regrets very much that the proposal to increase the membership dues failed. Increased revenue is very definitely and urgently needed to carry on the important work of the Association, and he hopes this endeavor will be renewed and with success.

The Committee Family or Juvenile Courts was appointed as requested by the Association, with Judge Joe W. Sanders, Chairman, Baton Rouge.

Accept my thanks, please, for your support and assistance during my tenure of office.

The terms, "States' Rights" is the popular phrase used to signify the reservation to the States of constitutional powers under the Tenth Amendment. This Amendment declares that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", and merely restated the fact that the new national government was one of enumerated powers with the residue of undelegated powers remaining in the several States.

Chief Justice Marshall, the great nationalist and federalist, who fathered the doctrine of declaring acts of Congress and laws of the States unconstitutional, also laid down the judicial foundation for a broad and liberal interpretation of the United States Constitution. His view was based on the fact that he could find nothing in the Constitution to the effect that the powers granted to the Government should be strictly construed.

The States' Rights bench which followed John Marshall took a different view, and from Marshall's death until the New Deal era, the Court proceeded on the theory that the Tenth Amendment withdrew various matters of internal police from the right reach of power committed to Congress, and the Tenth Amendment was frequently invoked to curtail powers granted to Congress, notably the powers to regulate interstate commerce, to enforce the Fourteenth Amendment, and to lay and collect taxes. The amendment was read in these early decisions as if it meant that the exercise of power granted to the Federal Government must stop at the point at which it began encroachment upon matters which had traditionally been regarded as under local jurisdiction.

With the beginning of personnel changes on the Supreme Court in 1937, the administration began to plan legislation in terms of which they could ask the court to overrule its declaration of the unconstitutionality of the Child-Labor Law. The Fair Labor Standards Act of 1938 established federal control of hours, wages, and child-labor in connection with goods produced for shipment in interstate commerce, and in 1941 the Supreme Court held the Act valid and overruled the child-labor case. By this decision, the court had come full circle in its exposition of the Tenth Amendment. The Court had returned to the position of John Marshall and explicitly restated this thesis when the unanimous court stated "The power of Congress over interstate commerce 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution' * * * That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. * * * It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the States. [* * * Our conclusion is unaffected by the Tenth Amendment which — states but a truism that all is retained which had not been surrendered.]"

By a broad interpretation of the Commerce and Welfare Clauses of the Constitution, the United States Supreme Court since 1941 has restricted the rights of the individual States to such an extent that the States are in danger of becoming mere empty shells and little more than a shadow of their former sovereign selves.

To illustrate, I will give you specific instances where this has occurred and is occurring: In 1952, the United States Supreme Court vindicated the rights of the Federal Government in labor cases and restricted those of the individual States by holding, first, that the jurisdiction of the National Labor Relations Board was extended to cover more than forty thousand franchised automobile dealers, in addition to thousands of other dealers, and, second, that state courts may not grant injunctions in labor cases where relief is available under federal law.

We all know what has happened in the famous segregation cases. The Supreme Court not only departed from the established doctrine of *stare decisis* by overthrowing its eighty-year old doctrine of equal but separate facilities, but assumed the power under the Fourteenth Amendment to enforce integration in all state supported schools in contravention of the Fifth Section of the Fourteenth Amendment, which declares that Congress shall enforce this article by appropriate legislation.

In the very recent Phillips Petroleum case, in which the Supreme Court held that the Federal Power Commission had jurisdiction over the production and gathering of natural gas, neither the Congress nor the Federal Power Commission intended or thought that such power had been given. The Federal Power Commission had not asserted such jurisdiction even in sales where the gas found its way into interstate commerce. In fact, the Natural Gas Act provided that the Commission was not to have jurisdiction over the "production or gathering of natural gas". In spite of all this, however, the Supreme Court held that the Federal Power Commission did have jurisdiction over gas at the wellhead which was destined for interstate delivery.

The Supreme Court, in another far-reaching restriction on States' Rights, has very recently held that the Federal Government alone may prosecute those who advocate its overthrow. The decision followed the conviction of a top communist party leader, both in a Pennsylvania state court under the State Sedition Act and in a federal court under the Smith Act.

In a 6-to-3 decision, Chief Justice Warren, in delivering the majority opinion of the Court, said that Congress intended to occupy the field of sedition when it passed the 1940 Smith Act and succeeding anti-subversive statutes. In a strong dissent, Justices Reed, Minton and Burton said: "In the responsibility of national and local governments to protect themselves against sedition, there is no 'dominant' interest * * *." Congress has not, in any of its statutes relating to sedition, specifically barred the exercise of state power to punish the same acts under state law. In fact, Representative Smith, after whom the Act is named, says that Congress did not mean to supersede State Sedition laws and has already introduced a bill that would put the state laws back in place.

The situation is becoming alarming in view of the 5-to-4 decision of the Supreme Court just two weeks ago, wherein a refusal to answer questions about communist affiliations under the Fifth Amendment was held not to be sufficient grounds for the dismissal of a college professor teaching in a state supported school. The provision of the New York City Charter that permitted prompt firing of employees who hid behind the Fifth Amendment was said to be unconstitutional. The decision also raised broader questions about a state's or a city's right to fire persons, such as policemen, who might refuse to testify about graft on the grounds of self-incrimination.

In spite of the usurpation of States' Rights by the Supreme Court, or maybe because of it, there seems to be some hope that the States may once again gain back some of their sovereignty.

Representative Howard Smith of Virginia, who took issue with the Supreme Court in the recent sedition decision, is now pushing a States' Rights bill which is designed to limit the power of the Supreme Court. His bill proposes to prevent the Court from deciding that any federal law invalidates a state law, unless Congress specifically says so, or unless there is a clear conflict between the two laws.

The proposed Smith Bill provides:

> "That no Act of Congress shall be construed as indicating an intent on the part of Congress to occupy the field in which the Act operates, to the exclusion of all State laws on the same subject matter, unless such Act contains an express provision to that effect. No Act of Congress shall be construed as invalidating a provision of State law which would be valid in the absence of such

Act unless there is a direct and positive conflict between an express provision of such Act and such provision of the State law so that the two cannot be reconciled or consistently stand together."

In explaining that his bill goes beyond the mere question of amending the Smith Sedition Act, Representative Smith is quoted as saying: "I think the question is so broad and so destructive of States' rights that the time is long overdue for Congress to speak."

In February 1952, I made a short address, from which I quote:

> "Would that peoples of other parts of the world could live in peace and happiness as we do here in Louisiana, where people of every color, race and creed live in harmony, each one respecting the rights and beliefs of the other."

In closing, may I add that the laws of our various States should, under the Tenth Amendment, be interpreted to meet the complicated situations that arise in the Northern, Eastern, Western and Southern parts of our great country.

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Report of Secretary - Treasurer

Robert E. LeCorgne, Jr., New Orleans
Biloxi, Mississippi, May 2, 1956

To the Members of the
Louisiana State Bar Association
Your Secretary-Treasurer respectfully reports:

Membership:

The Membership of the Association as of May 2, 1956 is		3,586
Made up as follows:		
Members of the Judiciary	128	
of which number 34 City and Municipal Court Judges are also on the active Membership rolls and pay dues		
Active members, not including the 34	3452	
faculty members	6	
	3586	
Included in the above are:		
127 members in the Armed Forces		
22 aged, not actively practicing who do not pay dues.		
Admissions to practice during 1955-56, without examination by the Committee on Bar Admissions, under amendment by Supreme Court of Louisiana of June 2, 1953	104	
Examined by Committee	7	
	111	
Deaths since last annual meeting	39	

Your financial statement for the fiscal year ending March 31, 1956, is as follows:

General Account:

Balances in Bank **April 1st 1955**		25,508.88
Collected Since:		
Dues 1943-1944	5.00	
1954-1955	70.00	
1955-1956	18,553.50	

1956-1957	8,884.50			
1957-1958	53.00	27,456.00		
Admissions to the Bar Fees	1,050.00			
Examination Fees	650.00	1,700.00		
Louisiana Formulary Royalties		117.85		
Redemption U.S. Savings Bond		4,400.00		
Interest War Bonds		55.00		
Penalties non-payment dues:				
1943-1944	5.00			
1954-1955	35.00			
1955-1956	30.00	70.00	33,798.85	59,307.73
Disbursements:				
For period April 1, 1955 to March 31, 1956				36,129.35
				23,178.38
Balance 1955 Annual Meeting Special A/C				162.39
Reserve A/C				97.57
Balances in Bank March 31, 1956				23,438.34
United States Savings Bonds Series "K"				4,500.00
Petty Cash				15.00
				27,953.34
Banks' Balances				
National American			9,873.94	
Whitney			7,406.44	
Hibernia			6,161.96	
			23,442.34	
Amount of 1955-1956 Dues Collected	30,287.50			

The entire Receipts over Disbursements show a balance of $132.26

Entertainment fees collected for 1956 annual meeting are not included in this statement, accounting for which will be made later.

The books have been audited by Edward J. de Verges, Certified Public Accountant, whose audit is available for inspection.

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Report of Budget Committee

Actual receipts for year ending March 31, 1956	32,190.35
Actual fixed expenses for the usual yearly procedure of the Association	27,698.36
Receipts over expenses	4,491.99

Expended through special appropriations		
Public Relations 1954-55	840.04	
Junior Bar Section	485.57	
Fifth Conference Local Bars	1,015.08	
Am. Bar Ass'n Regional Meetg.	314.49	
Constl. Convention Comm.	526.52	
Proposed Increase of Dues	626.48	
Questionnaire Social Security	255.04	
Association Membership List	29.94	
	4,093.16	
Receipts over Expenses of $398.83		398.83

This credit, of course, is due to the fact that in certain instances the budget allocations, had credits, which off set the item of $4,093.16.

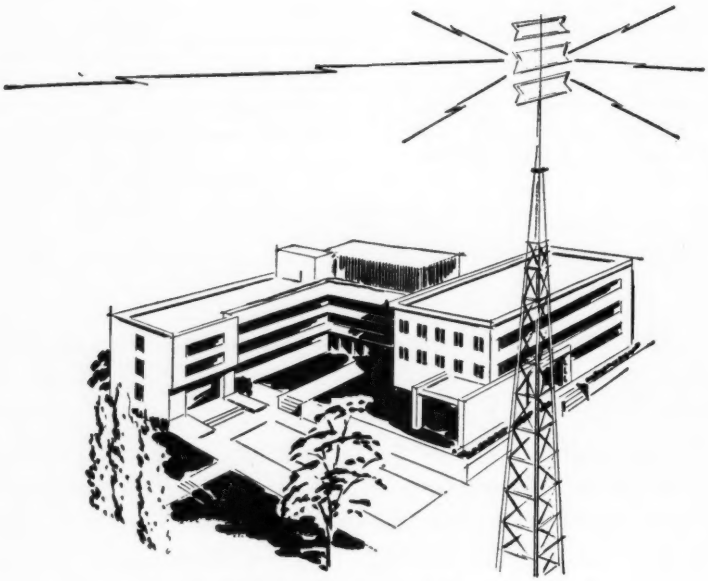
Last year Thomas W. Leigh, then president and chairman of the Budget Committee called the attention of the Association to the urgent need of an increase in membership dues in order to carry on an active program. Richard Montgomery, the year preceding Mr. Leigh also gave his thought on the need of increase of membership dues.

The result of the budget just read to you shows that the situation with regard to finances as pictured by Mr. Montgomery and Mr. Leigh, remains the same.

Two of the above named special appropriations will be resumed for the new fiscal year in the amount of $3,000.00, and most probably other important activities will develop during the coming year needing funds over the prospective revenue for the year.

It would be very helpful indeed, if what my predecessors have said and what I am saying about this situation would be brought home to the members not here by the members who are here, in insuring the success of the next proposal to increase the membership dues.

William Waller Young
Chairman



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Resolutions Adopted by the Association at 16th Annual Meeting

WHEREAS, this Association at its annual meeting in 1955 passed a resolution in favor of investigating the possibility of providing more adequate representation by local bars in the State Association;

WHEREAS, pursuant to that resolution a committee was appointed by the President and a study of the situation made;

WHEREAS, this committee has reported to the Board of Governors a plan for setting up a House of Delegates;

WHEREAS, the Board of Governors has approved this plan in principal and directed that it be submitted to the annual meeting;

NOW THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association in convention assembled, recommends that the Articles of Incorporation of the Louisiana State Bar Association be amended so as to change Article VII Section 1, as follows:

"ARTICLE VII

BOARD OF GOVERNORS

Section 1. Such affairs of this Association as are provided for in this Charter, or as directed by the House of Delegates, are hereby vested in a Board of Governors consisting of the President, the Vice President, the Secretary-Treasurer, the outgoing President of the Association for the year following his term of office, the Chairman of the Junior Bar Section of the Association, as ex-officio members; one member each from the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Congressional Districts of this State, to be elected by mail ballot, in event of additional nominations as provided for herein, by the membership from each such district; provided that for all purposes, the First and Second Congressional Districts shall be considered and shall meet and vote as a unit; one member to be elected by the membership of this Association at large from

the members of the Council of the Louisiana State Law Institute; and one full time faculty member to be elected by the membership of this Association at large from the full time faculty of each Louisiana Law School that belongs to the Assocation of American Law Schools."

And to insert Article VII-A immediately following Article VII and preceding Article VIII, as follows:

ARTICLE VII-A

HOUSE OF DELEGATES

Sec. 1. The control and administration of the Association, except as otherwise provided in this Charter, shall be vested in a House of Delegates.

Sec. 2. The House of Delegates shall be composed of one delegate from each judicial district (the words "judicial district" in this section include the Parish of Orleans as a judicial district) of the State, who shall be an active or faculty member of the Bar of such district; provided, that in every judicial district where there are more than one district judge (the words "district judge" in this section include civil district judges, criminal district judges, juvenile judges and family court judges) such judicial district shall be entitled to one additional delegate for each such additional district judge. Each delegate shall be elected for a term of one year to begin with the commencement of the second annual meeting following his election, or until the election and certification of his successor.

Sec. 3. The resident members of the Bar of each judicial district (the words "judicial district" in this section include the Parish of Orleans as a judicial district) shall, not less than forty days before the opening of the annual meeting in each year elect, by secret ballot under such procedure as the Board of Governors may fix, the delegate or delegates to which such judicial district is entitled under this Charter. If a delegate is not elected from any judicial district or a delegate resigns during his term or a vacancy occurs for any reason, the President with the approval of the Board of Governors shall appoint such delegate.

Sec. 4. The House of Delegates shall meet not less than two times during the term of its members, once during the annual

meeting of the Association, and again approximately six months later, and at such other times and places as it may determine. Additional meetings of the House of Delegates may be called by the President of the Association at his own volition; or shall be called by the Secretary of the Association on the written request or consent of twenty-five (25) members of the House of Delegates. The President of the Association, or in his absence, the vice president, shall preside at the meeting of the House of Delegates. In the absence of both the President and the Vice-President the House shall elect one of its members to preside. The House of Delegates may adopt such rules and procedure for the transaction of its business as it deems suitable, and shall be the judge of the selection and qualification of its members.

Sec. 5. The House of Delegates shall have all the powers necessary or incidental to the control and administration of the affairs of the Association, except only those powers and functions which are vested in the Board of Governors, the Committee on Bar Admissions and the Committee on Professional Ethics and Grievances, by this Charter.

Sec. 6. Each member of the House of Delegates shall have one vote. Voting by proxy shall not be permitted.

Sec. 7. All delegates shall serve without compensation.

Sec. 8. Every resolution which shall have been adopted by the House of Delegates shall be presented to the Board of Governors. If the Board of Governors approve such resolution, it shall adopt it; if the Board of Governors shall by majority vote disapprove such resolution, it shall within ten days therefrom submit the same, by secret mail ballot, for adoption or rejection by a majority vote, to the voting members of this Association who actually vote; all such ballots shall be returned within ten days from the time they are sent. The Board of Governors shall have ten calendar days after any resolution shall have been presented to it within which to approve or disapprove it; any resolution approved or not disapproved within said period shall be the action of the Association, notwithstanding the term of the House of Delegates has expired. The date and hour when the resolution is delivered to the Board of Governors shall be endorsed thereon."

And to amend Article VIII, Section 1, as follows:

"ARTICLE VIII

By-Laws

Sec. 1. Authority to Adopt. The House of Delegates may adopt, amend or repeal by-laws for the Association not inconsistent with the provisions hereof.

Sec. 2. Amendments. By petition signed by not less than fifty active members in good standing of the Association, addressed to the House of Delegates and transmitted to the Secretary-Treasurer, the matter of adoption, amendment or repeal of any by-law may be submitted to the entire membership to be voted upon by secret mail ballot, and a majority of the votes cast shall be controlling. All such ballots must be returned within thirty days from the time they are sent by the Secretary-Treasurer."

BE IT FURTHER RESOLVED that the Board of Governors of the Louisiana State Bar Association take such steps as are proper and necessary and as provided by the Articles of Incorporation of the Louisiana State Bar Association to take a vote of the members voting of said Association on the adoption of the proposed amendments to Article VII, Section 1 and Article VIII of said Articles of Incorporation, and the insertion of Article VII-A of said Articles of Incorporation; and should said vote be in the affirmative adopting said amendment and insertion, then the Board of Governors of the said Association is hereby authorized and directed to take such steps as are proper and necessary toward drafting and preparing an amendment to the said Articles of Incorporation, to sign same on behalf of the Association and to file and record same in the office of the Secretary of the State of Louisiana and such other places as may be required by law, and to do any and all other things proper and necessary to properly and legally amend said Articles of Incorporation as above provided.

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Whereas, William Waller Young, Sr. of New Orleans has served with distinction as President of our Association for the past year, and

Whereas, Mr. Young's leadership and example has given impetus to much improvement in the Association and the profession, and

Whereas, among all the lawyers in Louisiana William Waller Young's many years of unselfish services as Secretary-Treasurer and President of the Association stands out as a shining example for all of us,

THEREFORE, Be it resolved that the Louisiana State Bar Association in Convention assembled express its sincere admiration, affection and deep appreciation to William Waller Young for his unselfish service in promotion of the welfare of the Louisiana State Bar Association and its members.

Be it further resolved that the Assistant Secretary of the association present a suitably certified copy of this resolution to Mr. Young.

WHEREAS: The activities of the Louisiana State Bar Association have been for some time restricted and impeded by a lack of adequate finances, and

WHEREAS: Many members of the Association desire and have asked for an enlarged program, and

WHEREAS: The Association is presently operating at a deficit, and

WHEREAS: The members of the various committees of the Louisiana State Bar Association have for years worked under the severe handicap of inadequate financial support and have been able to serve only at considerable financial sacrifice, and

WHEREAS: The privilege of serving the Louisiana State Bar Association should not be restricted to those who are able to devote personal means to the necessary expenses, and

WHEREAS: The dues paid by the members are unreasonably low, and

WHEREAS: The activities of the Louisiana State Bar Association should not be restricted to the limited program now possible because of the limited funds available, and

WHEREAS: All members of the Association would greatly benefit by an expanded program which is only possible through an increase in dues,

NOW THEREFORE, BE IT RESOLVED THAT:

The Louisiana State Bar Association in convention assembled recommends that the Articles of Incorporation of the Association be amended so as to change Section 2 of Article V to read as

follows:

"Section 2. *Dues.* The Annual membership dues for active members who have been admitted to the practice of law in the State of Louisiana for five (5) years or more, shall be Twenty-five ($25.00) Dollars, and for those who have been admitted for less than five (5) years, shall be Five ($5.00) Dollars. Members newly admitted to practice shall pay no dues until April 1 next following their admission."

BE IT FURTHER RESOLVED, THAT the Board of Governors of the Louisiana State Bar Association take such steps as are proper and necessary and as provided by the Articles of Incorporation of the Louisiana State Bar Association, to take a vote of the members of said Association on the adoption of the proposed amendment to Article V, Section 2 of said Articles of Incorporation; and should said vote be in the affirmative adopting said amendment, then the Board of Governors of the said Association is hereby authorized and directed to take such steps as are proper and necessary toward drafting and preparing an amendment to the said Articles of Incorporation, to sign same on behalf of the Association and to file and record same in the office of the Secretary of State of the State of Louisiana and such other places as may be required by law, and to do any and all other things proper and necessary to properly and legally amend said Articles of Incorporation as above provided.

BE IT FURTHER RESOLVED THAT the Board of Governors distribute the ballots on or before June 15, 1956.

Committee and Section Reports

JURISPRUDENCE AND LAW REFORM

The Committee on Jurisprudence and Law Reform considered a number of proposals and suggestions for the improvement of the law of Louisiana. It respectfully submits hereinbelow a summary of the matters considered, a brief recital of the reasons which have induced the Committee to recommend action thereon by the Association, and appropriate recommendations to initiate such actions:

1. *Proposed statute authorizing public sale of succession property for any purpose.* Prior to 1938, no statutory authorization for the sale of succession property at private sale existed; such property could be sold only to pay debts and legacies; and movables had to be exhausted before any immovables belonging to the succession could be sold. Act 290 of 1938 relaxed the rigid rules of the Civil Code in all three of these respects. Under the provisions of this excellent statute, now incorporated into the Revised Statutes of 1950 as Sections 1451 through 1454 of Title 9 thereof, succession property can be sold at private sale, and the old priority of the required sales of all movables before the alienation of immovables was abolished so far as the act was applicable. Further, any succession property can be sold in order to pay debts or legacies, "or for any other purposes". In Succession of Pipitone, 204 La. 391, 15 So.2d 801 (1944), the quoted language of the statute was given effect under the holding that succession property can be sold thereunder not only to pay debts or legacies, but "for any other lawful purpose, or reason of necessity". This statute has worked so well in actual practice, and has proven so convenient during the eighteen years since its adoption that the Louisiana State Law Institute not only is recommending its retention, but is further recommending the extension thereof by providing for the *public sale* of succession property for purposes other than the payment of debts or legacies. Book VI, Probate Procedure, Title III, Administration of Successions, Chapter 6, Sale of Succession Property, Article 1.

It appears anomalous that the sale of succession property for purposes other than the payment of debts or legacies is

permitted at private sale, where precautions must be taken to prevent the sacrifice of succession property, yet there is no similar authorization for similar sales of succession property at public auction, where the judicial advertisement and competitive bidding afford effective guarantees against possible sacrifice. In the administration of solvent successions, after the payment of all debts or legacies, authorization for the public sale of residual succession property to effect distribution of the proceeds to numerous heirs, some of whom are nonresidents, would be quite helpful and convenient. It would permit of a faster and cheaper mode of distribution than the present necessity of sending the heirs into possession, effecting a partition by licitation, and then distributing the proceeds to these heirs.

In collaboration with W. Davis Cotton, Esquire, who unofficially requested the drafting of the proposed statute, and with Leon Sarpy, Esquire, the Reporter of the Louisiana State Law Institute who drafted the recommended articles for the proposed new Code of Practice, your Committee has drafted the necessary proposed statute to attain this objective. A copy of this proposed act is annexed to this Report.

RECOMMENDATION No. 1: That the annexed proposed statute, authorizing the sale of succession property at public auction for purposes other than the payment of debts or legacies, be approved in principle, and referred to the Committee on Legislation with directions to take appropriate action to secure its introduction and adoption at the coming session of the Legislature.

2. *Proposed amendment of R.S. 47:2422 to clarify prescription of inheritance taxes.* Both the Constitution of Louisiana inferentially (Art. XIX, § 19), and the Louisiana Inheritance Tax Act expressly (R.S. 47:2422), provide that inheritance taxes shall prescribe in "three years from the thirty-first day of December of the year in which such taxes become due". It is apparent, therefore, that in order to give effect to this prescription, the date on which these taxes are due must be fixed. This is done impliedly by the statute itself, which provides that, in all cases in which an administration has not been ordered by the court, the heirs or legatees "shall, within six months of the death of the decedent" prepare a descriptive list of the property of the succession, serve a copy thereof on the inheritance tax collector and rule him into court to have the amount of taxes

due judicially determined. R.S. 47:2408. Also, under the R.S. 47:2409, if the heirs or legatees have not taken these steps to determine the taxes due, and if no administration has been applied for, and the heirs have not caused themselves to be sent into possession, the inheritance tax collector may institute proceedings against them by rule to determine the amount of taxes due by them. Further, R.S. 47:2420 provides that inheritance taxes bear interest at the rate of one per cent per month "beginning six months after the death of decedent * * * saving * * * the right to stop the running of interest * * * by paying the amount of tax with accrued interest, estimated or ascertained, * * *".

Based upon these statutory provisions the Attorney General of Louisiana twice ruled that inheritance taxes become due six months after the death of the deceased, unless an administration is applied for within that time. Op. Atty. Gen., 1938-40, p. 1098; Op. Atty. Gen., 1942-44, p. 1693. This has been the interpretation of the statute by the great majority of practicing lawyers in Louisiana.

In the recent case of Succession of Brewer, 84 So.2d 191 (La. 1955), however, the Supreme Court of Louisiana held that until the amount of inheritance taxes due by the heirs or legatees is determined judicially, these taxes do not become due and payable, and hence prescription does not commence to run until the judicial determination. Under this decision, no matter when the deceased died, the prescription of three years provided in the Constitution and statute could not begin to run until judicial determination of the taxes due, and since the heirs or legatees could not be sent in possession judicially until the payment of the amounts ascertained to be due, the effect of the prescription is completely destroyed.

The effect of this decision is far-reaching. Not only is the property of the deceased which the heirs accepted unconditionally but extrajudicially subject to the State's claim for inheritance taxes, interest, and penalties, in perpetuity, but properties transferred by these heirs to third persons are likewise subject to the payment thereof. R.S. 47:2412. In view of the large number of cases since 1922 where successions have not been opened judicially, the impact of this decision upon third persons will be considerable. Further, with respect to persons dying during the late depression, the present inflated values as a practical

matter will have the effect of increasing the incidence and amount of taxes, interest, and penalties due.

For these reasons, your Committee is of the opinion that the Association should recommend to the Legislature that the recent decision in Succession of Brewer, supra, be overruled legislatively. A proposed statute to accomplish this purpose is annexed.

RECOMMENDATION No. 2: That the annexed proposed statute, clarifying the prescription of inheritance taxes by providing that such taxes become due and payable six months after the death of the deceased, be approved in principle, and referred to the Committee on Legislation with directions to take appropriate action to secure its introduction and adoption at the coming session of the Legislature.

3. *Proposed Estate Tax Apportionment Act.* Under the present Federal legislation no provision is made for the apportionment among the various heirs and legatees of the decedent of the estate taxes paid to the United States. The Federal courts have held that the apportionment of such taxes is left exclusively to the law of the State where the decedent was domiciled. In the effort to provide workable and equitable rules on the subject, a number of states have adopted statutes regulating the subject. In its 1955 Report to the Association, this Committee recommended the adoption of the apportionment statute in Louisiana. 3 La. Bar J., No. 1, p. 53.

Since that time, the Louisiana State Law Institute has appointed an able committee, composed of Oliver P. Stockwell, Esquire, as chairman, and Messrs. Wood Brown, B. B. Taylor, Jr., James A. Van Hook, and Paul O. H. Pigman, as members, to study the matter and to draft a suitable proposed statute for adoption by the Legislature at its next session. Thus far, this committee has completed its study sufficiently to determine that the most effective and workable statute would be one modelled upon the provisions of the Uniform Estate Tax Apportionment Act, with the necessary adaptations to Louisiana law. At the time of the submission of this Report, your Committee had not yet received a copy of the Law Institute committee's draft of the proposed act. Your Committee, however, is of the opinion that such a statute is needed in Louisiana.

RECOMMENDATION No. 3: That the adoption of an Estate Tax Apportionment Act be approved in prin-

ciple; and that the matter be referred to the Committee on Legislation with directions to consider the proposed act drafted by the Louisiana State Law Institute committee, with full power to take any action thereon which the Committee on Legislation deems appropriate.

4. *Proposed revision of Louisiana Income Tax Act.* At the time of its adoption in 1934, the Louisiana Income Tax Act (now R.S. 47:21 et seq.) was reasonably well correlated with the Federal statute. Since that time, amendments made in both of these statutes have resulted in increasing variations and discrepancies, alleviated to some extent by the revision of the Louisiana act in 1950, but increased enormously by the adoption of the Internal Revenue Code in 1954. Today, these differences and variations are causing unnecessary difficulties for lawyers, certified public accountants, and other tax specialists.

To study the matter, and to recommend amendatory legislation bringing the Louisiana statute more in line with the Federal legislation, a Joint Professional Committee has been appointed, consisting of a representative of the Louisiana State Society of Certified Public Accountants, of the Louisiana Chapter of the Tax Executives Institute, and of the Louisiana State Bar Association. Edward B. Benjamin, Junior, Esquire, has been appointed the Bar Association's representative on this Joint Professional Committee. This joint committee has not yet had an opportunity to complete its study of these matters, hence its recommendations have not been available for consideration by your Committee. The latter, however, is of the opinion that the contemplated revision is badly needed, and would serve a most useful professional purpose.

RECOMMENDATION No. 4: That the Report and Recommendations of the Joint Professional Committee on the proposed revision of the Louisiana Income Tax Act, when received, be referred to the Committee on Legislation for consideration, with full power to take any action thereon which the Committee on Legislation deems appropriate.

.... Bill No. .... By Mr.....

AN ACT

To amend Title 9 of the Louisiana Revised Statutes of 1950 by adding thereto a new section to be designated R.S. 9:1521, authorizing the sale at public auction of any property of a

succession, movable, immovable, or both, without priority, for purposes other than the payment of debts or legacies.

Be it enacted by the Legislature of Louisiana:

Section 1. Title 9 of the Louisiana Revised Statutes of 1950 is hereby amended by adding thereto a new section to be designated R.S. 9:1521, reading as follows:

§ 1521. *Public sale of succession property for purposes other than payment of debts or legacies*

The property of a succession, movable, immovable, or both, may be sold at public auction for any purpose. There shall be no priority in the order of sale as between movable and immovable property when succession property is sold for any purpose other than the payment of debts or legacies.

An administrator or executor desiring to sell succession property at public auction for any purpose other than the payment of debts or legacies shall petition the court for authority therefor, describing the property and setting forth the reasons for the sale. When it considers the sale to be in the best interest of the succession, heirs, and succession creditors the court shall render an order authorizing the sale of the property at public auction.

Except as otherwise provided in this section, the property shall be sold in the manner provided for the sale of succession property at public auction to pay debts or legacies.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed; but none of the provisions hereof shall be deemed to repeal or to affect the provisions of Articles 1165, 1668, and 1669 of the Civil Code, or of R.S. 9:1451 through R.S. 9:1454.

.... Bill No. .. .. By Mr. .....

AN ACT

To amend and re-enact Section 2422 of Title 47 of the Louisiana Revised Statutes of 1950, so as to clarify the prescription of inheritance taxes by providing that these taxes become due and payable six months after the death of the deceased, unless an administration of the succession has been applied for within that time; and to provide that the State of Louisiana may enforce its claim for inheritance taxes which otherwise would be prescribed hereunder at any time within

six months of the effective date hereof.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 2422 of Title 47 of the Louisiana Revised Statutes of 1950 is hereby amended and re-enacted so as to read as follows:

"§ 2422. *Prescription on action for inheritance taxes*

"Inheritance taxes due to the state shall prescribe, as provided in the constitution, in three years from the thirty-first day of December of the year in which such taxes become due.

"For the purposes of this Section, inheritance taxes shall be due and payable six months after the death of the deceased, unless an administration of the succession has been applied for within that time."

Section 2. Notwithstanding the provisions of Section 1 hereof, the State of Louisiana may enforce its claim for inheritance taxes which otherwise would be prescribed under the provisions of Section 1 on the effective date hereof at any time within six months of such effective date.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

SPECIAL COMMITTEE ON RETIREMENT BENEFITS

This committee was appointed by President Young on October 25, 1955 in response to a request from Honorable Richard C. Coburn, Chairman of Committee on Retirement Fund Legislation of the National Conference of Bar Presidents.

While the committee has not had an opportunity to meet, the individual members have done considerable work on the matter and the Chairman has been in contact with Mr. Coburn by mail and personally.

While the Committee of the Conference of Bar Presidents is primarily interested in the Jenkins-Keogh Bill, the question of inclusion of lawyers under Social Security also came to the attention of the committee and through the offices of the Louisiana State Bar Association a vote was had in Louisiana in which the opinions were expressed as follows:

Those voting favored inclusion of self-employed lawyers within the Social Security Act on a voluntary basis and opposed inclusion on a compulsory basis.

The House of Delegates of the American Bar Association following results of a poll in thirty-four states went on record as favoring compulsory coverage for self-employed lawyers under Social Security if voluntary coverage is not available.

The committee expects to secure articles on the subject which will be submitted to the Louisiana Bar Journal for printing for information of the members.

It is recommended that the Committee be continued.

/s/ Geo. T. Madison
Chairman

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SECTION OF JUDICIAL CANDIDATES

In the report of the Committee on Selection of Judicial Candidates to the Louisiana Bar Association meeting for 1950, the following recommendation was made:

> "Your Committee recommends that in view of the tremendous interest shown in this matter, study of the plan should be continued, not only by your Committee but by the Bar and Bench as a whole * * *."

In line with this recommendation, the Chairman requested advice from the President as to the desirability of further study at this time of the so-called Missouri Plan, regarding the selection of judges, and was advised by the Assistant Secretary that the Board of Governors had authorized the expenditure of $500.00 in connection with this Committee's activities and that the Board of Governors unanimously concluded that this Committee should be reactivated.

Information concerning prior activities of this Committee with regard to the Missouri Plan was furnished to the members of the Committee, and a meeting of the Committee was called for Lafayette, Louisiana, on January 27, 1956. Of the Committee, only the Chairman and Mr. Theodore F. Cangelosi were able to attend the meeting. The meeting was, however, attended by the President and the President-Elect of the Association and by Mr. Thomas W. Leigh, former Chairman of this Committee.

An interesting discussion of the matter was had, but in view of the fact that only the Chairman and one other member of

the Committee were able to be present at the meeting, it was concluded that another meeting of the Committee should be held at a later date for the purpose of more thoroughly considering the desirability of any new action regarding the Missouri Plan. Unfortunately, due to the press of other work, your Chairman has not found a convenient time to hold another meeting and no further action has been taken. This report, therefore, does not contain any recommendations,

John T. Guyton.

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COMMITTEE ON OBITUARIES

Marlin Risinger, Jr., Chairman

Your Committee on Obituaries regretfully reports that the following members of the Louisiana State Bar Association have died since the last annual meeting of the Association, held in Biloxi, on May 4, 1955.

MEMBERS OF THE JUDICIARY

Sam A. Le Blanc
Napoleonville
Late Justice, Supreme Court of Louisiana
Died, July 8, 1955

Harold Joseph Moore
New Orleans
Judge, Municipal Court
Died, September 5, 1955

Paul William Brosman
New Orleans—Washington D.C.
Judge, United States Court of Military Appeals
Died, December 21, 1955

Nathan Bankston Tycer
Hammond
Late Judge, 21st Judicial District Court
Died, October 21, 1955

Allyn S. Drew
Minden
Late City Judge, Minden
Died, January 14, 1956

MEMBERS OF THE BAR

Harvey Eugene Ellis
Covington
Died, May 10, 1955

Joseph I. Boudreaux
Abbeville
Died, June 13, 1955

Nancy Adele Kilpatrick
Shreveport
Died, October 19, 1955

John R. Fridge
Baton Rouge
Died, November 6, 1955

Eldon Spencer Lazarus
New Orleans
Died, June 14, 1955

Judith Hyams Douglas
New Orleans
Died, June 24, 1955

A. Giffen Levy
New Orleans
Died, July 10, 1955

Charles Albert Danna
New Orleans
Died, August 9, 1955

John Haskell Doyle, II
Metairie
Died, August 13, 1955

John Rene Perez
New Orleans
Died, August 20, 1955

Helmuth Carlyle Voss
Roslyn, Long Island, New York
Died, August 23, 1955

Stanley McDermott
New Orleans
Died, August 29, 1955

Edwin Ignatius Mahoney
New Orleans
Died, September 7, 1955

Frank William Hart
New Orleans
Died, September 8, 1955

Morris Benjamin Redmann
New Orleans
Died, September 8, 1955

Sidney Glenn Myers
Shreveport
Died, September 8, 1955

Preston John Schowalter
New Orleans
Died, September 18, 1955

Philip David Rittenberg
New Orleans
Died, October 17, 1955

Thomas Wilson Arrington
Tulsa, Oklahoma
Died, November 7, 1955

Kerchival Hundley
Alexander
Died, November 24, 1955

Delos Roselius Johnson
Franklinton
Died, December 1, 1955

Joseph Maxime Blache, Jr.
Hammond
Died, December 2, 1955

Bryan Edward Bush
Shreveport
Died, December 12, 1955

Alfred Joseph Bonomo
New Orleans
Died, December 23, 1955

John Dante Schilleci
New Orleans
Died, January 2, 1956

Hall Trigg Elder
Ruston
Died, January 25, 1956

William Minos Gordy
New Iberia
Died, January 28, 1956

Percy Cornelius Smith
Jennings
Died, January 28, 1956

Theodore Howard McGiehan
New Orleans
Died, February 23, 1956

Sidney Albert Marchand, Jr.
Donaldsonville
Died, March 9, 1956

Jesse L. Webb, Jr.
Baton Rouge
Died, April 28, 1956

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COMMITTEE ON LAWYER REFERENCE PLAN

This is a report on the activity of the Committee on Lawyer Reference Plan of the Louisiana State Bar Association. A meeting of the Committee was held in the offices of the Association at New Orleans on February 24, 1956, with the following persons present: Mr. Michael M. Irwin, Mr. A. Deutsch O'Neal, Mr. Robert H. Gibson and Mr. James H. Trousdale, Jr., Chairman.

Although Mr. Gibson had not been appointed a member of the Committee, he was invited to attend for the reason that he is the secretary of the Legal Aid Bureau of the New Orleans Bar Association and has had considerable experience with the Lawyer Reference Plan, which is in effect in New Orleans.

Following a discussion of the aims and purposes of the Lawyer Reference Plan and their application in Louisiana, the Committee unanimously agreed on the following recommendations:

1. The Lawyer Reference Plan has little, if any, practical application in Louisiana communities with populations under 100,000.

2. The Committee on Lawyer Reference Plan should be merged with the Committee on Legal Aid.

3. The members of the Legal Aid-Lawyer Reference Plan Committee should come from Louisiana cities with population in excess of 100,000.

4. The Louisiana State Bar Association should make a study of the desirability of an advertising program to bring to the attention of the public the necessity of competent legal advice and the availability of such advice at reasonable cost.

STANDING COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

The Standing Committee on Legal Education and Admission to the Bar has considered a number of important problems concerning legal education, the requirements for admission to the bar and the fact that in recent years the Louisiana bar examination has been of a high type that has received the general approval of the committees and agencies that have responsibility for reviewing the examinations.

A majority of the Committee announced adherence to the view that the diploma privilege should be abolished. There is a danger that continuance of the diploma privilege for the better qualified applicants for admission to the bar will cause the Examining Committee to have inadequate comparative standards for successfully judging the competence of the candidates. The members of the bar are referred to pages 76-79, Louisiana Bar Journal for July 1954 for a complete explanation of the issue concerning the diploma privilege.

The Committee recommends the continuance and expansion of Institutes by the law schools for the benefit of both practicing attorneys and law students.

Eugene A. Nabors, Chairman

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UNAUTHORIZED PRACTICE OF LAW

There was submitted to the Committee for its consideration the opposition filed by the Virginia State Bar Association to the proposed Statement of Principles between the Committee on Professional Ethics and Grievances of the American Bar Association and the Commercial Law League of America. The Virginia State Bar was inviting similar action be taken by other State Bar Associations. Due consideration was given by each member of our Committee, and although there was a difference in the views of some of the members, it was the consensus of opinion of the majority of the members of our Committee that the proposed Statement of Principles was not objectionable and that no opposition should be made to it by this Association.

A request was made to give consideration to the form of letter used by the Central Bureau of Investigation, Inc. at Lake Charles, Louisiana, in attempting to make collections of outstanding indebtednesses. This matter was considered and it was concluded that the contents of the letter did not justify taking any formal action against the company.

There was recently referred to the Committee a complaint against the alleged unauthorized practice activities of John E. Perkins, in Baton Rouge, Louisiana. This matter is still under investigation and should be taken over and continued by the new Committee.

During the course of the year, we have been in correspondence with Committees of Unauthorized Practice of the Law of various Bar Associations within and outside of the State of Louisiana and have rendered our views and assistance in connection with their inquiries on problems of those Associations.

Andrew R. Martinez
General Chairman

CONTINUING PROFESSIONAL EDUCATION

The change in our society resulting from commercial, industrial and social changes have required that the law in several areas progress and develop in order to perform its function. These changes in the law together with increased specialization in fields outside of the practice of law which tend to encroach upon the profession have added a great stimulus to the interest in post admission education of lawyers in this state. To meet its obligations to the profession and to the public, the committee has sought to present programs of substance to afford the practicing lawyers of Louisiana an opportunity to progress and expand and become more proficient.

The activities of the Committee during the past year have been directed primarily toward the practical phases of our profession and principally the improvement in appellate and trial techniques.

At the Fifth Conference of Local Bar Associations conducted at Lafayette on January 26th through January 28th, the Committee was extremely fortunate in being able to present an address by Chief Justice John B. Fournet. At the request of the Committee, Justice Fournet presented his talk on "Effective presentation of a case to the Supreme Court in brief and in argument." Justice Fournet presented a very comprehensive and easily understood paper on the aforesaid subject which was received very enthusiastically by the members of the Bar in attendance at the Lafayette meeting. Because of the importance of the topic and the substance of Chief Justice Fournet's talk, it was published in the April, 1956 issue of the Louisiana State Bar Journal as a welcome guide to the practicing lawyer in this state. The Committee would like to publicly express its appreciation to Chief Justice Fournet for the time and consideration given to the topic in preparation for his talk and as well to thank him for providing us with so worthy an addition to the legal literature.

The Committee also presented a program for the improvement of the practicing lawyers' trial techniques. After canvassing the members of the Louisiana State Bar Association to determine whether there was sufficient interest in a pro-

gram of that type, the response warranted the sponsorship and presentation of a Trial Technique Clinic. The Clinic was conducted at the Tulane Law School in New Orleans by Mr. Irving Goldstein, a member of the Illinois Bar and also an instructor on the faculty of the Northwestern University Law School. From March 15th through 18th, some 72 lawyers, including registrants from outside of the state, attended and participated in the Clinic. At the end of the program, the response was so favorable that preliminary arrangements are now being made to have Mr. Goldstein return and present a clinic on advanced trial techniques. In addition to the Trial Technique Clinic presented in New Orleans, Mr. Goldstein also presented another in Shreveport with the assistance of the local Bar Association. That program was attended by approximately 50 lawyers. As an added indication of the very considerable interest in continuing professional education, it should be mentioned that all of the lawyers in attendance at the Trial Technique Clinic paid a registration fee, those participating under the guidance of the instructor, Mr. Goldstein, having paid $50.00 each and those auditing the Clinic paid $40.00 each. After payment of the fees agreed upon to Mr. Goldstein, the Committee will have realized a small gain as a result of this clinic. Of course, such funds will be utilized for additional programs in continuing professional education.

The Committee, jointly with the Insurance Section, presented a program of great interest to the practicing Bar generally in this state. Two important areas of casualty law, the Federal Employers' Liability Act and the law of Negligence as it applies to personal injuries and automobile accident cases, were discussed by lawyers recognized as authorities in those fields. The Hon. Ben. C. Dawkins, Jr., Judge, U.S. District Court, Western District of Louisiana, presided over a panel discussion of the Federal Employers' Liability Act in which Leonard Lockhard of the Shreveport Bar discussed presentation of such claims from the viewpoint of the plaintiff and Frederick D. Hudson, Jr. of the Monroe Bar presented his views regarding effective defense of claims arising out of that act. In addition, Mr. H. Alva Brumfield of the Baton Rouge Bar, speaking from his experience in personal injury actions arising out of automobile accidents presented suggestions for the most favorable presentation of a plaintiff's personal injury claim. Mr. Alvin R. Christovich, Sr. of the New Orleans Bar discussed

the defense of such personal injury claims. The Committee is grateful to Judge Dawkins and all of the lawyers who participated in presenting the excellent program at the convention meeting.

The Committee wishes to specially acknowledge the excellent work done by Mr. M. J. Maloney Jr. of the New Orleans Bar who, in his capacity as secretary of the committee, is largely responsible for the effectiveness of the committee during the past year. His work on behalf of the committee required much time and energy and we appreciate his substantial contributions to the program of continuing professional education in our State.

The Committee feels very strongly that the need for continuing professional education and the interest in such activities warrants additional programs in this area. In the past, this Committee, like all others of the Association, has been seriously handicapped by the lack of funds. While the monies realized from the Trial Technique Clinic will make available additional funds for arranging and presenting programs of continuing professional education during the forthcoming year, the Committee feels that its budget should be increased substantially. It is only with increased funds and the cooperation of the local Bar associations and the three law schools of the state that this Committee can adequately meet the needs for continuing professional education.

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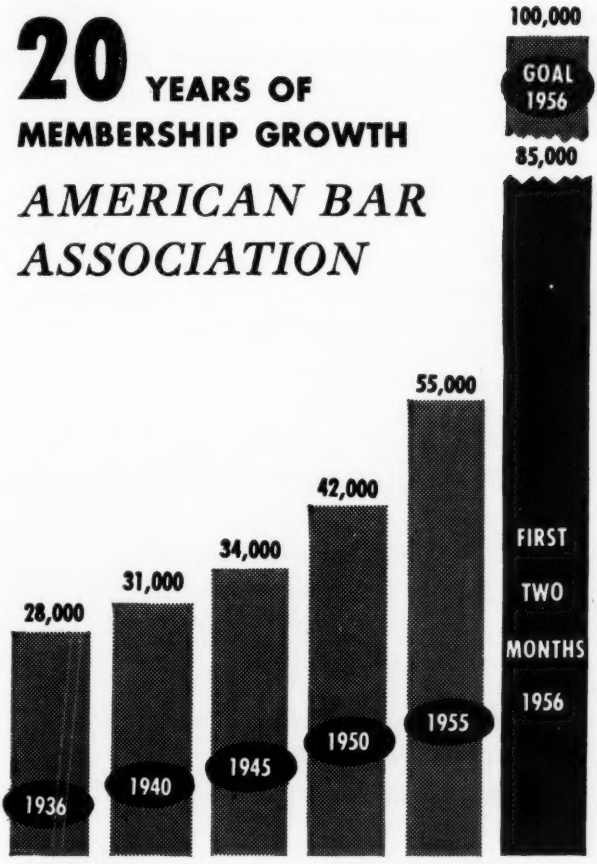

CHICAGO—Membership of the American Bar Association has tripled since 1936, the year formation of the House of Delegates made the ABA a truly representative national organization of the bar. The most spectacular growth in the 78-year history of the Association has occurred during the first two months of 1956 due to the nation-wide membership development campaign. Goal of the current campaign is a membership of 100,000 by August.

Tax Symposium At ABA Meeting

At the annual meeting of the Committee on State and Local Taxes of the Section of Taxation, American Bar Association, to be held in the English Room, Baker Hotel, Dallas, Texas at 2 p. m., August 28, 1956, there will be a symposium on severance taxes in the production of oil and gas, of which George D. Brabson, Esquire, Tax Attorney for the Ohio Oil Company, will be the moderator. At the same meeting there will be held discussions on the conflict and overlapping of Federal and State taxation. All members of the bar association interested in these subjects are invited to attend the meeting.

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Report Louisiana Bar Journal

Robert E. LeCorgne, Jr., Editor
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Biloxi, Mississippi, May 2, 1956

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